

ATTACHMENT 45

HIGHLY CONFIDENTIAL

Neal, Matthew A.

March 19, 2014

1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: PROCESSED EGG PRODUCTS

ANTITRUST LITIGATION

MDL NO. 2002

08-md-02002

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VIDEO DEPOSITION OF MATTHEW A. NEAL

Taken at 2510 Capital Avenue, SW

Battle Creek, Michigan

Commencing at 9:18 a.m.

Wednesday, March 19, 2014

Before Trisha Cameron, RPR, CSR-6175

Henderson Legal Services, Inc.

202-220-4158

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2 (Pages 2 to 5)

2	<p>1 APPEARANCES:</p> <p>2 MR. RICHARD CAMPBELL</p> <p>3 MS. SARAH ANSARI</p> <p>4 Jenner & Block</p> <p>5 353 North Clark Street</p> <p>6 Chicago, Illinois 60654</p> <p>7 (312) 923-2818</p> <p>8 E-mail: rcampbell@jenner.com</p> <p>9 Appearing on behalf of The Kellogg Company.</p> <p>10</p> <p>11 MR. WILLIAM GREENE</p> <p>12 Stinson, Leonard, Street, L.L.P.</p> <p>13 150 South Fifth Street</p> <p>14 Suite 2300</p> <p>15 Minneapolis, Minnesota 55402</p> <p>16 (612) 335-1500</p> <p>17 E-mail: william.greene@stinsonleonard.com</p> <p>18 Appearing on behalf of Michael Foods.</p> <p>19</p> <p>20 ALSO PRESENT: Mark Myers, videographer.</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	4	<p>1 (Exhibits continued from Page 3)</p> <p>2 Exhibit 17 147</p> <p>3 Exhibit 18 148</p> <p>4 Exhibit 19 149</p> <p>5 Exhibit 20 150</p> <p>6 Exhibit 21 151</p> <p>7 Exhibit 22 154</p> <p>8 Exhibit 23 159</p> <p>9 Exhibit 24 166</p> <p>10 Exhibit 25 170</p> <p>11 Exhibit 26 173</p> <p>12 Exhibit 27 175</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
3	<p>1 INDEX</p> <p>2 WITNESS: PAGE</p> <p>3 MATTHEW A. NEAL</p> <p>4 Examination by Mr. Greene 6</p> <p>5</p> <p>6</p> <p>7 EXHIBITS</p> <p>8 Exhibit 1 21</p> <p>9 Exhibit 2 43</p> <p>10 Exhibit 3 65</p> <p>11 Exhibit 4 71</p> <p>12 Exhibit 5 77</p> <p>13 Exhibit 6 88</p> <p>14 Exhibit 7 92</p> <p>15 Exhibit 8 93</p> <p>16 Exhibit 9 103</p> <p>17 Exhibit 10 109</p> <p>18 Exhibit 11 120</p> <p>19 Exhibit 12 125</p> <p>20 Exhibit 13 134</p> <p>21 Exhibit 14 140</p> <p>22 Exhibit 15 145</p> <p>23 Exhibit 16 146</p> <p>24 (Exhibits continued on Page 4)</p> <p>25</p>	5	<p>1 Battle Creek, Michigan</p> <p>2 March 19, 2014</p> <p>3 About 9:18 a.m.</p> <p>4 * * *</p> <p>5 VIDEOGRAPHER: We are now on the record.</p> <p>6 This is the videotaped deposition of Matthew Neal being</p> <p>7 taken in Battle Creek, Michigan. Today is Wednesday,</p> <p>8 March 19th, 2014. The time is now 9:18 a.m.</p> <p>9 And at this time, will the attorneys please</p> <p>10 state their appearances for the record, and the court</p> <p>11 reporter please swear in the witness.</p> <p>12 MR. GREENE: I'm William Greene of the law</p> <p>13 firm of Stinson Leonard Street, Counsel for Defendant</p> <p>14 Michael Foods.</p> <p>15 MR. CAMPBELL: Richard Campbell of Jenner &</p> <p>16 Block, LLP, in Chicago on behalf of the Kellogg Company</p> <p>17 and the deponent.</p> <p>18 MS. ANSARI: Sarah Ansari of Jenner & Block,</p> <p>19 LLP, on behalf of Kellogg.</p> <p>20 * * *</p> <p>21 MATTHEW A. NEAL,</p> <p>22 having been first duly sworn,</p> <p>23 was examined and testified as follows:</p> <p>24 * * *</p> <p>25</p>

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<p style="text-align: right;">6</p> <p>1 EXAMINATION</p> <p>2 BY MR. GREENE:</p> <p>3 Q. Good morning, Mr. Neal.</p> <p>4 A. Morning.</p> <p>5 Q. We introduced ourselves before. But my name is William</p> <p>6 Greene. I'm going to be taking your deposition this</p> <p>7 morning. To start with, could you please state and</p> <p>8 spell your name for record.</p> <p>9 A. Yes. It's Matthew Anderson Neal. It's M-A-T-T-H-E-W,</p> <p>10 A-N-D-E-R-S-O-N, N-E-A-L.</p> <p>11 Q. And what is your address?</p> <p>12 A. 103 Sunnyside Drive, Battle Creek, Michigan.</p> <p>13 Q. And where are you employed?</p> <p>14 A. The Kellogg Company.</p> <p>15 Q. What's your business address?</p> <p>16 A. 67 West Michigan, Battle Creek, Michigan.</p> <p>17 Q. Mr. Neal, have you had your deposition taken before?</p> <p>18 A. No.</p> <p>19 Q. This is the first time?</p> <p>20 A. That's correct.</p> <p>21 Q. All right. Well, I'm sure Mr. Campbell and Ms. Ansari</p> <p>22 have explained the procedure to you. But let me go</p> <p>23 over a few of the background matters. You're</p> <p>24 testifying today under oath just as you would be at</p> <p>25 trial. Do you understand that?</p>	<p style="text-align: right;">8</p> <p>1 a break. Is that okay?</p> <p>2 A. That's fine.</p> <p>3 Q. All right. Is there any reason this morning why you</p> <p>4 can't give full and complete testimony?</p> <p>5 A. No.</p> <p>6 Q. Why don't we start with some background information.</p> <p>7 Can you give me your educational background?</p> <p>8 A. How far back do you want me to go?</p> <p>9 Q. Well, let's go post-high school.</p> <p>10 A. I went to Kellogg Community College, got my associate's</p> <p>11 degree there in drafting and design. And then I</p> <p>12 continued it at Ferris State University, which is in</p> <p>13 Big Rapids, and got my product design engineering</p> <p>14 degree.</p> <p>15 Q. What kind of degree?</p> <p>16 A. It's product design engineering.</p> <p>17 Q. Product design engineering?</p> <p>18 A. That's correct.</p> <p>19 Q. And what is that?</p> <p>20 A. It is very similar to mechanical engineering, just more</p> <p>21 practical than the theoretical side of engineering.</p> <p>22 Q. Okay. After you got your degree from Ferris State, is</p> <p>23 that the end of your formal education?</p> <p>24 A. That's correct.</p> <p>25 Q. Okay. Did you go to work after you graduated from</p>
<p style="text-align: right;">7</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And the court reporter is taking down the</p> <p>3 questions that I ask and the answers that you provide.</p> <p>4 So it's important that you answer out loud, instead of</p> <p>5 a nod of a head. Do you understand that?</p> <p>6 A. Yes, I do.</p> <p>7 Q. Okay. And it's important that we not talk over one</p> <p>8 another. I'll do my best not to interrupt or cut you</p> <p>9 off, and that way the court reporter can take down both</p> <p>10 the question and answer. Is that fair?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Now, I'm going to try and make my questions as</p> <p>13 clear as I can. Sometimes the questions may be</p> <p>14 confusing or you don't understand them. If at anytime</p> <p>15 I ask you a question you don't understand, please just</p> <p>16 let me know, and I'll do my best to try to make the</p> <p>17 question clear. Is that fair?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. If you do answer a question, I'm going to assume</p> <p>20 you understood the question. Is that fair?</p> <p>21 A. Yes.</p> <p>22 Q. If you want to take a break at anytime, we can</p> <p>23 accommodate that. I would ask that if a question is</p> <p>24 pending, that we go ahead and finish the answer to that</p> <p>25 particular question, and then we can go ahead and take</p>	<p style="text-align: right;">9</p> <p>1 Ferris State?</p> <p>2 A. I did.</p> <p>3 Q. When did you graduate from Ferris State?</p> <p>4 A. 1999.</p> <p>5 Q. And what was your first position after graduating?</p> <p>6 A. I was an engineering manager at a place in Hastings,</p> <p>7 Michigan, called Viatec.</p> <p>8 Q. What kind of business was Viatec?</p> <p>9 A. They made municipal tanks and stainless steel tanks for</p> <p>10 the industries of like cosmetics or food companies. We</p> <p>11 also made fiberglass tanks for like the Big Three</p> <p>12 automotive companies for chroming. Anything that would</p> <p>13 be corrosive to any metals, they would use the</p> <p>14 fiberglass.</p> <p>15 Q. And what was your position title there?</p> <p>16 A. It was engineering manager. I supervised six CAD</p> <p>17 operators.</p> <p>18 Q. Six CAD, is that computer assisted --</p> <p>19 A. Computer aided -- I'm sorry. Computer aided drafting.</p> <p>20 Q. Okay. How long were you in that position?</p> <p>21 A. Three years.</p> <p>22 Q. So is that through about 2002?</p> <p>23 A. That's correct. It was -- I was actually laid off</p> <p>24 right after 9-11. So right then.</p> <p>25 Q. And what was your -- how long were you out of work?</p>

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<p style="text-align: right;">10</p> <p>1 A. Approximately one year.</p> <p>2 Q. What did you do after that? What was your next</p> <p>3 position?</p> <p>4 A. I was hired by Jacobs Engineering, and I was working</p> <p>5 for the Kellogg Company in the packaging engineering</p> <p>6 group.</p> <p>7 Q. First what is Jacobs Engineering?</p> <p>8 A. Jacobs Engineering is a consulting firm for</p> <p>9 engineering, which Kellogg's had hired them and me to</p> <p>10 do packaging engineering for Kellogg's.</p> <p>11 Q. Okay. Where is Jacobs Engineering located?</p> <p>12 A. We have an actual office here in Battle Creek.</p> <p>13 Q. Is that where you were working?</p> <p>14 A. That's correct.</p> <p>15 Q. But you were not an employee of the Kellogg's Company</p> <p>16 at that point?</p> <p>17 A. That's correct.</p> <p>18 Q. So you were an employee of the Jacobs Company?</p> <p>19 A. Yes.</p> <p>20 Q. And the Jacobs Company worked under contracts for</p> <p>21 Kellogg; is that correct?</p> <p>22 A. That's correct.</p> <p>23 Q. And explain to me again what were -- what were you</p> <p>24 doing as an employee of Jacobs for Kellogg.</p> <p>25 A. I was packaging engineer. So what I would do is take</p>	<p style="text-align: right;">12</p> <p>1 Q. Okay. What happened in 2009?</p> <p>2 A. 2009 there was an opportunity to work internal to</p> <p>3 Kellogg's as a packaging -- in packaging procurement,</p> <p>4 and that's when I was hired.</p> <p>5 Q. So you first went to work -- when did you become an</p> <p>6 employee of the Kellogg Company?</p> <p>7 A. In 2009.</p> <p>8 Q. Is that the right way to say it, the Kellogg Company?</p> <p>9 A. Yes, I believe that is correct.</p> <p>10 Q. And if I say Kellogg, does that work too?</p> <p>11 A. I understand.</p> <p>12 Q. So you became an employee of Kellogg's in 2009?</p> <p>13 A. That's correct.</p> <p>14 Q. And what was the position you took in 2009?</p> <p>15 A. It was an associate packaging procurement manager.</p> <p>16 Q. Associate packaging procurement manager. Okay. Can</p> <p>17 you explain -- before I get there, is that your current</p> <p>18 position today?</p> <p>19 A. No, it is not.</p> <p>20 Q. Okay. How long did you have the position of associate</p> <p>21 packaging procurement manager?</p> <p>22 A. Approximately two and a half years.</p> <p>23 Q. Until 2011 or 2012?</p> <p>24 A. No. That was -- I was hired in 2009. So it would be</p> <p>25 2011.</p>
<p style="text-align: right;">11</p> <p>1 -- they do packaging work requests. So anytime we have</p> <p>2 a new package that would come out, I would be the one</p> <p>3 to design that, whether it be the film, the carton, and</p> <p>4 the corrugated. So I would design those and get them</p> <p>5 ready for distribution and finding locations to create</p> <p>6 those packages.</p> <p>7 Q. And just for examples, what kind of packages are we</p> <p>8 talking about here? Give me some examples of --</p> <p>9 A. I don't know if you've seen like in any of the gas</p> <p>10 stations the cereal in a cup which is like a plastic</p> <p>11 cup with cereal in it with a film over the top of that.</p> <p>12 So I helped design some of those. We had -- in</p> <p>13 addition to that, I mean, I would take existing</p> <p>14 packages and make them better or more cost effective as</p> <p>15 well.</p> <p>16 Q. Okay. And were all of your responsibilities for the</p> <p>17 Jacobs Company related to these kind of packaging-type</p> <p>18 tasks?</p> <p>19 A. Yes.</p> <p>20 Q. How long were you working for the Jacobs Company?</p> <p>21 A. Approximately six years.</p> <p>22 Q. And does that bring us to 2008 or so?</p> <p>23 A. That's correct. 2009.</p> <p>24 Q. 2009?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">13</p> <p>1 Q. Okay. So sometime in 2011 you took a different</p> <p>2 position?</p> <p>3 A. That's correct.</p> <p>4 Q. What was the position you took in 2011?</p> <p>5 A. That would have been the strategic manager of raw</p> <p>6 ingredients. I think -- let me just -- I want to</p> <p>7 interrupt you because I want to think that I was hired</p> <p>8 in 2006 into the Kellogg Company --</p> <p>9 Q. Okay.</p> <p>10 A. -- because I was hired into the raw ingredients in</p> <p>11 2009. So --</p> <p>12 Q. All right. At anytime, you know, you realize an answer</p> <p>13 needs to be modified or whatever, just let me know like</p> <p>14 you've done.</p> <p>15 A. Yes.</p> <p>16 Q. Let's go back then. I want to make sure I understand.</p> <p>17 You were working for the Jacobs Company from 2002 to</p> <p>18 2006?</p> <p>19 A. That's -- yeah.</p> <p>20 Q. Okay. And we talked about what you did with the Jacobs</p> <p>21 Company.</p> <p>22 A. That's correct. Yes.</p> <p>23 Q. Now, all right. You're saying now in 2006 you became</p> <p>24 employed by the Kellogg Company.</p> <p>25 A. That's correct.</p>

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<p style="text-align: right;">14</p> <p>1 Q. Okay. And when you joined the Kellogg Company in 2006,</p> <p>2 you took the position of associate packaging</p> <p>3 procurement manager?</p> <p>4 A. That's correct.</p> <p>5 Q. And how long did you have the position of associate</p> <p>6 packaging procurement manager?</p> <p>7 A. It was approximately three, two and a half, three</p> <p>8 years.</p> <p>9 Q. And did you take a new position at Kellogg in 2009?</p> <p>10 A. That's correct.</p> <p>11 Q. And what position did you take in 2009?</p> <p>12 A. That was the strategic raw procurement, raw ingredient</p> <p>13 role.</p> <p>14 Q. And what's the name of that position you took?</p> <p>15 A. It's strategic raw material procurement manager.</p> <p>16 Q. Is that position, strategic raw material procurement</p> <p>17 manager, is that the position you have today?</p> <p>18 A. That is.</p> <p>19 Q. Okay. So let's go back to the associate packaging</p> <p>20 procurement manager position. What did you do in that</p> <p>21 position?</p> <p>22 A. That would be -- I would have worked with the packaging</p> <p>23 engineering group that I had previously come from and</p> <p>24 actually procure the new packages that they were</p> <p>25 looking at.</p>	<p style="text-align: right;">16</p> <p>1 eggs, oats, and nut meats.</p> <p>2 Q. What was the last one?</p> <p>3 A. Nut meats. So it would have been peanuts, pecans,</p> <p>4 almonds, and a variation of that.</p> <p>5 Q. And those are called nut meats?</p> <p>6 A. That's what we call them, yes.</p> <p>7 Q. Okay. We'll go with that. Prior to 2009, did you have</p> <p>8 any previous experience related to dairy, eggs, oats,</p> <p>9 or nut meats?</p> <p>10 A. No.</p> <p>11 Q. So prior to 2009, focusing on eggs in particular, you</p> <p>12 didn't have any job for any company that involved eggs</p> <p>13 or egg products?</p> <p>14 A. That is correct.</p> <p>15 Q. What portion of your responsibilities as strategic raw</p> <p>16 material procurement manager are devoted to eggs as</p> <p>17 opposed to the other categories?</p> <p>18 A. During that time, it was approximately -- I would say</p> <p>19 it was probably about 20 percent of my -- of that</p> <p>20 portfolio.</p> <p>21 Q. When you went into the position of strategic raw</p> <p>22 material procurement manager, to whom did you report?</p> <p>23 A. When I was hired in, it was Nelson Griffin.</p> <p>24 Q. What was his position?</p> <p>25 A. He was a director of raw ingredients.</p>
<p style="text-align: right;">15</p> <p>1 Q. When you say "procure the new packages" --</p> <p>2 A. Either --</p> <p>3 Q. -- help me understand what you mean.</p> <p>4 A. Purchase or get quotes from different suppliers. We</p> <p>5 would go out with a bid to multiple different</p> <p>6 suppliers. And then with that, we would -- within the</p> <p>7 procurement department, we would kind of select which</p> <p>8 supplier that the engineer then would need to work with</p> <p>9 for the materials.</p> <p>10 Q. And what kind of materials were you buying in that</p> <p>11 position?</p> <p>12 A. It would have been flexible films, cartons, and then</p> <p>13 corrugated; and then also if we were to do the cereal</p> <p>14 in the cup and any of the specialty.</p> <p>15 Q. All right. And so in 2009, you become strategic raw</p> <p>16 material procurement manager, correct?</p> <p>17 A. That's correct.</p> <p>18 Q. What did you do -- and that's your current position,</p> <p>19 correct?</p> <p>20 A. Yes.</p> <p>21 Q. All right. So starting -- starting in 2009, what were</p> <p>22 your responsibilities as strategic raw material</p> <p>23 procurement manager?</p> <p>24 A. Okay. When I first started in 2009, I had four</p> <p>25 different categories. They would have been dairy,</p>	<p style="text-align: right;">17</p> <p>1 Q. Is he still with the company?</p> <p>2 A. He is no longer with the company.</p> <p>3 Q. When did he leave?</p> <p>4 A. Probably right around 2011 or '12.</p> <p>5 Q. Who do you report to today?</p> <p>6 A. Javier Ysunza.</p> <p>7 Q. Can you spell that for the record.</p> <p>8 A. H-A-V-I-E-R, Y-S-U-N-Z-A.</p> <p>9 Q. When you took the position strategic raw material</p> <p>10 procurement manager in 2009, how did you go about</p> <p>11 learning about eggs and egg products?</p> <p>12 A. It's a combination of things. One is from the previous</p> <p>13 buyer who actually only had that category for less than</p> <p>14 six months. But he taught me what he knew about the</p> <p>15 egg category, as well we had some files from previous</p> <p>16 that we had kept. So just really learning from them,</p> <p>17 as well as from our suppliers anything that I could.</p> <p>18 Q. Who was that previous egg buyer that had been in the</p> <p>19 position for six months?</p> <p>20 A. It was Janson Nishiko.</p> <p>21 Q. Other than Mr. Nishiko, was there anyone else in the</p> <p>22 company who helped you learn about eggs and egg</p> <p>23 products?</p> <p>24 A. No.</p> <p>25 Q. You mentioned the suppliers. When you took over the</p>

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<p style="text-align: right;">18</p> <p>1 position, who were the principal suppliers of eggs and</p> <p>2 egg products for Kellogg's?</p> <p>3 A. Our main supplier would have been Michael Foods.</p> <p>4 Q. And who did you interact with at Michael Foods?</p> <p>5 A. It would have been Ed Cutler or also from Bender</p> <p>6 Goodman whose -- there's a relationship there, Bob</p> <p>7 Keller.</p> <p>8 Q. You said there's a relationship there. What do you</p> <p>9 understand that relationship, the relationship between</p> <p>10 Bender Goodman at Michael Foods to be?</p> <p>11 A. I see it as Bender Goodman is their sales arm for</p> <p>12 Michael Foods, sales arm and they help out</p> <p>13 logistically.</p> <p>14 Q. Did you have any contact at Kellogg with anyone else</p> <p>15 who had served in the role as egg buyer?</p> <p>16 A. Yes.</p> <p>17 Q. Who?</p> <p>18 A. It would have been Kelly Tobey.</p> <p>19 Q. Okay.</p> <p>20 A. But we never spoke anything of eggs because my</p> <p>21 understanding of when she had had it, it was quite a</p> <p>22 while ago.</p> <p>23 Q. By the time you took the position in 2009, it was your</p> <p>24 understanding it had been some time since Ms. -- is it</p> <p>25 Ms. Tobey?</p>	<p style="text-align: right;">20</p> <p>1 procurement manager starting in 2009.</p> <p>2 A. That's correct.</p> <p>3 Q. And you are -- you continue to hold that title?</p> <p>4 A. I do not.</p> <p>5 Q. You don't. Okay. I misunderstood. Is there a point</p> <p>6 you stopped being strategic raw material procurement</p> <p>7 manager?</p> <p>8 A. 2013.</p> <p>9 Q. What happened in 2013?</p> <p>10 A. I was -- we switch categories quite frequently within</p> <p>11 the raw ingredient procurement. So I have actually</p> <p>12 switched out of all that and have gone into the oils</p> <p>13 category.</p> <p>14 Q. Okay. What's your title as of 2013?</p> <p>15 A. It's the same title.</p> <p>16 Q. Okay.</p> <p>17 A. Just that my categories have changed.</p> <p>18 Q. All right. And as of 2013 then, you no longer had any</p> <p>19 responsibility in the egg product area?</p> <p>20 A. That's correct.</p> <p>21 Q. So your firsthand knowledge related to egg products</p> <p>22 covers the period from 2009 to 2013?</p> <p>23 A. That is correct.</p> <p>24 MR. GREENE: Let's go ahead and mark this as</p> <p>25 Neal Exhibit 1.</p>
<p style="text-align: right;">19</p> <p>1 A. Yes.</p> <p>2 Q. Since Ms. Tobey had been involved in buying eggs?</p> <p>3 A. That's correct.</p> <p>4 Q. Clarify at the outside. Does Kellogg's buy any shell</p> <p>5 eggs?</p> <p>6 A. No.</p> <p>7 Q. And to your knowledge, has it ever bought shell eggs?</p> <p>8 A. No.</p> <p>9 Q. So we can focus -- when we talk about buying in the egg</p> <p>10 category, we can focus on egg products, correct?</p> <p>11 A. That's correct.</p> <p>12 Q. What have your activities been related to the purchase</p> <p>13 of egg products since you started in that area in 2009?</p> <p>14 A. I was the buyer of the egg products.</p> <p>15 Q. Do you negotiate the terms of contracts?</p> <p>16 MR. CAMPBELL: Can I interrupt a minute here,</p> <p>17 Bill. You haven't asked the question. But he's no</p> <p>18 longer the egg buyer. And maybe you ought to establish</p> <p>19 that, when that transition was.</p> <p>20 MR. GREENE: All right. Thank you.</p> <p>21 MR. CAMPBELL: Because you're asking in the</p> <p>22 present tense, and it's not relevant.</p> <p>23 MR. GREENE: All right.</p> <p>24 BY MR. GREENE:</p> <p>25 Q. So let me go back. You were strategic raw material</p>	<p style="text-align: right;">21</p> <p>1 (Exhibit No. 1 marked)</p> <p>2 BY MR. GREENE:</p> <p>3 Q. Mr. Neal, do you understand that today you are</p> <p>4 appearing not only as Matthew Neal but also as the</p> <p>5 corporate representative for the Kellogg Company?</p> <p>6 A. I do.</p> <p>7 Q. Okay. I'm showing you what's been marked as Neal</p> <p>8 Exhibit 1. Have you seen Exhibit 1 before?</p> <p>9 A. I have.</p> <p>10 Q. Okay. This is a Defendants' Amended Notice of</p> <p>11 Deposition of the Kellogg Company Pursuant to Rule</p> <p>12 Civil Procedure 30(b)(6). There were earlier versions</p> <p>13 of this because the schedule has changed, but the</p> <p>14 attachment I think has remained unchanged for some</p> <p>15 time.</p> <p>16 MR. CAMPBELL: For the record, Bill, he's not</p> <p>17 seen this document. This is the Amended Notice. What</p> <p>18 he saw was, as you just pointed out kindly, the</p> <p>19 previous notice. But substantively, the topics are the</p> <p>20 same, I assume.</p> <p>21 MR. GREENE: Right.</p> <p>22 MR. CAMPBELL: Yeah.</p> <p>23 BY MR. GREENE:</p> <p>24 Q. Mr. Neal, the first few pages identify where everyone</p> <p>25 is supposed to meet and when, and that has changed on a</p>

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<p style="text-align: right;">22</p> <p>1 number of occasions. But if you -- if you go to after 2 page 5, there is an Exhibit A.</p> <p>3 A. Uh-huh.</p> <p>4 Q. Focusing on that portion of the 30(b)(6) notice, have 5 you seen that before?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. It has definitions, and then it's followed by 8 deposition topics. Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. And is it your understanding that you've been 11 designated to testify on behalf of Kellogg's as to all 12 of these topics?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. What have you done to prepare yourself to 15 testify on these topics on behalf of the Kellogg 16 Company?</p> <p>17 A. I have researched, as I've stated, kind of the previous 18 egg buyers to see who those were. I've also gone back, 19 and with some help from our financial group, to look at 20 our previous purchases, actual pricing, actual volumes 21 from what was stated was the 2002 to the 20, I think, 22 09 or '08 timeframe. I've also just kind of tried to 23 figure out as much as possible from what had happened 24 as far as negotiations between those time periods as 25 well.</p>	<p style="text-align: right;">24</p> <p>1 A. It was Laura Hafner.</p> <p>2 Q. Can you spell that one?</p> <p>3 A. The Hafner part is H-A-F-N-E-R, and then Carrie Smith.</p> <p>4 Q. How do you spell Carrie?</p> <p>5 A. C-a-r-r-i-e. Those were the two financial people. And 6 then as well as our attorneys.</p> <p>7 Q. You mean the attorneys from Jenner & Block?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And I don't want to know the substance of any 10 conversations with them. But have you also talked to 11 any in-house counsel at Kellogg?</p> <p>12 A. No. Is Connie Macy --</p> <p>13 MR. CAMPBELL: Yeah.</p> <p>14 THE WITNESS: Yeah. Then yes.</p> <p>15 BY MR. GREENE:</p> <p>16 Q. And apart from talking to other people at Kellogg, 17 business people, what did you do to prepare for your 18 deposition today?</p> <p>19 A. As a matter of trying to find out as much information 20 as possible from the time periods that I've stated, any 21 information that I thought would be relevant to today.</p> <p>22 Q. Did you -- yes or no question. Did you meet with 23 Counsel in preparation for your deposition?</p> <p>24 A. Yes.</p> <p>25 Q. When?</p>
<p style="text-align: right;">23</p> <p>1 Q. Okay. So you have in preparing for your deposition, 2 you've focused on the period, is it 2002 to 2008?</p> <p>3 A. Oh, sorry. It's 1999 to 2009.</p> <p>4 Q. 1999 to 2009?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And just remind me -- or maybe this is in the 7 record. When in 2009, when during the year did you 8 become the strategic raw materials procurement manager?</p> <p>9 A. Can you please repeat that.</p> <p>10 Q. Month, time of year question.</p> <p>11 A. Oh.</p> <p>12 Q. You said that you became -- you became strategic raw 13 material procurement manager in 2009. When during 2009 14 did you get that position?</p> <p>15 A. About March.</p> <p>16 Q. Okay. Who did you talk to -- I want to list some names 17 here. Who did you talk to in preparing to testify on 18 behalf of Kellogg's for this 30(b)(6) deposition?</p> <p>19 A. As I had stated, I've talked to Janson Nishiko, Kelly 20 Tobey, Adaire Putnam.</p> <p>21 Q. Can you say that name?</p> <p>22 A. Adaire, A-D-A-I-R-E, Putnam, P-U-T-N-A-M, Chris 23 Charles, and our financial team that has helped me pull 24 some of the records.</p> <p>25 Q. And who have you spoken to, what individuals?</p>	<p style="text-align: right;">25</p> <p>1 A. We've met -- because the times have moved, we've met 2 several months ago, six months ago. And then as far as 3 of recent, we've met yesterday and a week ago.</p> <p>4 Q. How long did you meet yesterday?</p> <p>5 A. For an hour, two hours maybe at most.</p> <p>6 Q. And what about how long did you meet a week ago?</p> <p>7 A. An hour.</p> <p>8 Q. How long did you meet when you met six months ago?</p> <p>9 A. No more than an hour as well.</p> <p>10 Q. Let's go through each of the -- I've identified -- I 11 have six people identified as individuals you spoke to 12 in preparing yourself to testify on behalf of Kellogg. 13 Janson Nishiko, Kelly Tobey, Adaire Putnam, Chris 14 Charles, Laura Hafner, and Carrie Smith.</p> <p>15 A. That's correct.</p> <p>16 Q. Did you speak to anyone else in getting yourself 17 prepared to speak on behalf of the Kellogg Company?</p> <p>18 A. No.</p> <p>19 Q. All right. So let's talk about each of those people. 20 Janson Nishiko?</p> <p>21 A. That's correct.</p> <p>22 Q. It's Mr., is it?</p> <p>23 A. It is Mr.</p> <p>24 Q. Okay. And you said Mr. Nishiko was the egg buyer 25 immediately before you?</p>

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<p style="text-align: right;">26</p> <p>1 A. That's correct.</p> <p>2 Q. And had that position for approximately six months?</p> <p>3 A. That's correct.</p> <p>4 Q. So that would have been from late '08 to early '09?</p> <p>5 A. Yeah, that's correct.</p> <p>6 Q. How long did you speak with Mr. Nishiko?</p> <p>7 A. He would have just been on the conversations that we</p> <p>8 had had with Counsel like the six months prior.</p> <p>9 Q. Okay.</p> <p>10 A. He would have been on those conversations.</p> <p>11 Q. Well, those conversations -- if you spoke to someone to</p> <p>12 get information to help you prepare to testify on</p> <p>13 behalf of the company, I do want to know about those</p> <p>14 conversations. So can you tell me what -- how long you</p> <p>15 spoke to Mr. Nishiko?</p> <p>16 A. I never spoke to him outside of Counsel --</p> <p>17 Q. All right.</p> <p>18 A. -- about this deposition or anything.</p> <p>19 Q. Okay. But did you learn any information from</p> <p>20 Mr. Nishiko that helped you to prepare for your</p> <p>21 testimony today?</p> <p>22 A. No.</p> <p>23 Q. No?</p> <p>24 A. Nothing that's helped me, no.</p> <p>25 Q. So how did you learn about egg buying in the six months</p>	<p style="text-align: right;">28</p> <p>1 him where he gave you additional information?</p> <p>2 A. No.</p> <p>3 Q. Okay. So what you know from Mr. Nishiko really goes</p> <p>4 back to the time when you were transitioning?</p> <p>5 A. That is correct.</p> <p>6 Q. Now, when you were transitioning in 2009, when you were</p> <p>7 taking this position in early 2009, did you speak to</p> <p>8 any of the other five people, Kelly Tobey, Adaire</p> <p>9 Putnam, Chris Charles, Laura Hafner, or Carrie Smith</p> <p>10 about egg buying?</p> <p>11 A. No, not when I was transitioning.</p> <p>12 Q. All right. So have you spoken to Kelly Tobey to get</p> <p>13 information to prepare yourself to testify as Kellogg's</p> <p>14 representative today?</p> <p>15 A. No. Other than what we've spoken to with Counsel as</p> <p>16 far as when she had held the egg buying position, other</p> <p>17 than that, I've not.</p> <p>18 Q. Okay. You've not -- let me just make sure. You have</p> <p>19 some sort of job history information related to</p> <p>20 Ms. Tobey? You know when she held this position; is</p> <p>21 that what you mean?</p> <p>22 A. Yes. Within the conversations with Counsel as far as</p> <p>23 when we were discussing who had owned the egg buying in</p> <p>24 previous years.</p> <p>25 Q. Okay.</p>
<p style="text-align: right;">27</p> <p>1 before you took over the position? Let me ask a</p> <p>2 different question. There's a six-month period before</p> <p>3 you were strategic --</p> <p>4 A. Procurement. Sorry I made it so long.</p> <p>5 Q. Strategic raw material procurement manager, correct?</p> <p>6 A. Uh-huh.</p> <p>7 Q. Okay. And you weren't in -- you weren't in that</p> <p>8 position from late '08 to early '09, correct?</p> <p>9 A. Correct.</p> <p>10 Q. Okay. How have you made yourself knowledgeable about</p> <p>11 egg buying at Kellogg during that six-month period?</p> <p>12 A. Yeah. I think I misunderstood what you were saying as</p> <p>13 far as the knowledge about egg -- for egg buying. And</p> <p>14 what he would have explained to me back then would have</p> <p>15 been the pricing mechanism for how we purchase eggs</p> <p>16 during that -- because we were in the middle of a</p> <p>17 contract. So how that worked, things to look out for</p> <p>18 within the market, who my contacts were. I know he</p> <p>19 introduced me to those guys. That's pretty much the</p> <p>20 extent of what he had taught me about eggs.</p> <p>21 Q. Are you talking about what he taught you when you took</p> <p>22 the position?</p> <p>23 A. Took the position.</p> <p>24 Q. Okay. All right. But as far as preparing for the</p> <p>25 deposition, did you have a separate conversation with</p>	<p style="text-align: right;">29</p> <p>1 A. That was when I kind of had figured out that she was</p> <p>2 the egg buyer.</p> <p>3 Q. From your understanding, when was Kelly Tobey the egg</p> <p>4 buyer?</p> <p>5 A. Late 2002 to 2004, I believe.</p> <p>6 Q. But you have not spoken to Ms. Tobey about her</p> <p>7 experience as an egg buyer from 2002 to 2004?</p> <p>8 A. Not without Counsel present. We have spoken, and it</p> <p>9 was a matter of her telling me that when they</p> <p>10 negotiated pricing for eggs, the way that they had done</p> <p>11 it.</p> <p>12 Q. What did she tell you about how they -- how Kellogg</p> <p>13 negotiated the pricing of eggs during the period from</p> <p>14 2002 to 2004?</p> <p>15 A. She stated they had done a reverse auction.</p> <p>16 Q. What is a reverse auction?</p> <p>17 A. My understanding of a reverse auction and the way that</p> <p>18 they conduct it or the way I've seen it conducted</p> <p>19 anyway is that you'd have multiple suppliers bidding on</p> <p>20 -- the way we would do it at Kellogg's is each plant</p> <p>21 would have a particular item. So if it were to be</p> <p>22 liquid whole eggs, they would -- at a particular plant,</p> <p>23 they would be bidding on that, each item.</p> <p>24 So with that, the first bidder would say --</p> <p>25 I'm just going to use rough numbers. But liquid whole</p>

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<p style="text-align: right;">30</p> <p>1 eggs is .80 cents per pound. And then if the next 2 bidder wanted to, they would come in and they would 3 have to be below that .80 cents. So the next bidder 4 would have to be -- and it may even be a set number of 5 what it had to be below, if it was a half a cent or 6 whatever.</p> <p>7 So then they would give you a ranking of 8 you're in third place, second place. And then you'd 9 have to continue to essentially bid down that until the 10 time period was up.</p> <p>11 And usually the way it worked would -- there 12 would be a clock, however -- whatever was decided on 13 if it gets down to say under the two-minute mark, then 14 once somebody bids, it goes back to the two-minute 15 mark, and it allows another two minutes. So it would 16 continue on until nobody bids and the bidding stops.</p> <p>17 Q. Is it happening live? 18 A. Yes, that would be live. 19 Q. Are all the people in one place? 20 A. No. From the supplier standpoint you're saying? 21 Q. Correct. 22 A. No. All the suppliers would be at their own 23 facilities. It would have been over the internet. 24 Q. Okay. And when you say reverse auction, does the 25 reverse term simply mean that --</p>	<p style="text-align: right;">32</p> <p>1 A. Correct. 2 Q. That's what she told you? 3 A. Yes. 4 Q. How long did you spend talking with Ms. Tobey? 5 A. It would have been within that hour. 6 Q. So no more than an hour with Ms. Tobey? 7 A. No. 8 Q. Anything else that you recall about your conversation 9 with Ms. Tobey other than what you've told me today? 10 A. No. There is another person, Dan Bigelow, that I've 11 spoken to. 12 Q. Okay. And what was Dan Bigelow's position? 13 A. Dan Bigelow was my quality counterpart for eggs. He 14 was the quality ingredient manager when I had eggs. So 15 I just requested some specifications from him to 16 prepare for this. 17 Q. Okay. When you took over the position in 2009, you 18 were considered the egg products buyer, correct? 19 A. That's correct. 20 Q. Okay. So what does the -- what did Dan Bigelow as 21 quality ingredient manager do? 22 A. He would tend to write the specs and follow up 23 within -- if there were any issues with our plants as 24 far as a rejection or if there were issues with 25 Certificate of Analysis, if the eggs from our suppliers</p>
<p style="text-align: right;">31</p> <p>1 A. Because you're lowering the price. 2 Q. Because you are the buyer, you're -- the winner has to 3 keep going lower. 4 A. That's correct. 5 Q. Like a golf score? 6 A. Yes. 7 Q. All right. Apart from explaining reverse -- this sort 8 of reverse auction process, what else did Ms. Tobey 9 tell you about egg buying from 2002 to 2004? 10 A. I didn't gather anything else from her. 11 Q. Did she tell you about the terms of contracts between 12 Kellogg's and suppliers during that period? 13 A. I'm not certain. We may have discussed it, but I don't 14 recall like what the term of the contract was other 15 than it being a reverse auction. 16 Q. Did she tell you in preparing for this 30(b)(6) 17 deposition how the eggs or egg products were priced 18 under these contracts? 19 A. Yes, she would have. 20 Q. What did she tell you? 21 A. It was under the -- we watch the Urner Barry market. 22 And it's -- they had followed the Urner Barry market, 23 and I believe that it was priced by that market. 24 Q. In other words, the contracts themselves were 25 referenced to Urner Barry?</p>	<p style="text-align: right;">33</p> <p>1 came into our plant not under spec, he would then 2 review what the issues were and either, A, reject the 3 eggs, or get -- post an acceptance, depending on what 4 the issue was. 5 Q. What is a spec? 6 A. A spec would have listed off kind of what Kellogg's 7 would want out of their eggs to follow certain 8 guidelines. 9 Q. Okay. Is specs short for specifications? 10 A. I'm sorry. Yes, it is. 11 Q. And I want to understand. When Kellogg purchased egg 12 products, are you saying they didn't simply purchase 13 egg products that were already kind of existing in the 14 marketplace? 15 A. They were existing in the marketplace. But we still 16 had a specification from a standpoint of we would have 17 wanted certain testing done to those eggs, and then 18 that testing would have been on the Certificate of 19 Analysis when it arrived to our plants. So it would 20 have -- like making sure that it's negative of 21 salmonella, making sure that it -- making sure that it 22 conforms to the USDA, FDA regulations for what we've 23 stated or what they've stated as egg products, any 24 other information that we would have wanted within that 25 egg product.</p>

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<p style="text-align: right;">34</p> <p>1 Q. Does Kellogg's have -- it sounds to me negative 2 salmonella sounds like something that any food company 3 would want its egg products to be able to represent, 4 correct?</p> <p>5 A. That's correct.</p> <p>6 Q. And I assume USDA certifications would be something 7 that any food company would want its egg products to be 8 able to confirm.</p> <p>9 A. That's correct.</p> <p>10 Q. Are there any specifications -- when you were the egg 11 buyer, were there any specifications that were 12 distinctive to Kellogg?</p> <p>13 A. I don't know if there were any that were strictly for 14 Kellogg. But I know Michael Foods made an egg white 15 powder that was like a free flow. So it was still 16 priced the same as the other egg white powders, but 17 they signified it as a free flow compared to -- we had 18 different specification or item numbers for those two 19 different items.</p> <p>20 Q. Was the free flow something that Kellogg asked for?</p> <p>21 A. Yes.</p> <p>22 Q. What does free flow mean?</p> <p>23 A. I'm not certain of that.</p> <p>24 Q. But is it something that you believe is distinctive to 25 the Kellogg's order?</p>	<p style="text-align: right;">36</p> <p>1 Q. What was Adaire Putnam's connection to these events?</p> <p>2 A. She is part of a committee or a group that is for the 3 sustainability or works with sustainability and welfare 4 acts for Kellogg.</p> <p>5 Q. Do you know what her title is?</p> <p>6 A. I do not know what her title is. I can find it real 7 quick if you'd like me to.</p> <p>8 Q. Do you know how long she's been involved in issues 9 relating to sustainability and welfare?</p> <p>10 A. 2011.</p> <p>11 Q. She began in 2011?</p> <p>12 A. That's when that group I think was formed is 2011.</p> <p>13 Q. How long did you speak to Ms. Putnam?</p> <p>14 A. 15 minutes.</p> <p>15 Q. And Ms. Putnam, what did Ms. Putnam tell you?</p> <p>16 A. What I had requested from her is to see when her group 17 had gotten started, as well as if there were any 18 documents that she could forward my way as far as 19 anything that we've done to accommodate any social 20 pressures for -- on the egg category.</p> <p>21 Q. Have you talked to anybody about issues of animal 22 welfare that predate 2011?</p> <p>23 A. Yes.</p> <p>24 Q. Let me withdraw the question.</p> <p>25 A. Yes.</p>
<p style="text-align: right;">35</p> <p>1 A. No. I think they -- I think Michael Foods sold this to 2 other customers as well. It was just one of those 3 things that Kellogg's had specified that they wanted 4 for a particular plant.</p> <p>5 Q. To your knowledge, does -- have there been situations 6 where Kellogg's has had unique specifications for egg 7 products?</p> <p>8 A. No.</p> <p>9 Q. We talked about speaking to Ms. Tobey. Oh, did you 10 speak to Mr. Bigelow about -- in preparing for this 11 deposition?</p> <p>12 A. That's correct.</p> <p>13 Q. What did you talk to Mr. Bigelow about?</p> <p>14 A. I had just requested some of the specifications that we 15 had just within -- for preparation to see what -- if 16 there was anything outlying that I needed to know.</p> <p>17 Q. And did he tell you anything about relevant to egg 18 buying that you haven't told us about already?</p> <p>19 A. No.</p> <p>20 Q. Okay. Adaire Putnam. Did you talk to Adaire Putnam in 21 preparation for this deposition?</p> <p>22 A. Yes, a little bit.</p> <p>23 Q. And Adaire Putnam, was that somebody involved in egg 24 buying previously?</p> <p>25 A. No.</p>	<p style="text-align: right;">37</p> <p>1 Q. I'm not -- I myself am not thrilled with it. Did you 2 talk to anybody about Kellogg's policies relating to 3 animal welfare during the period prior to 2011?</p> <p>4 A. Yes.</p> <p>5 Q. Who did you talk to?</p> <p>6 A. It would have been Linda Pell.</p> <p>7 Q. Is that another-- are we adding a name? Is that 8 somebody else you talked --</p> <p>9 A. I'm sorry. I thought I -- yeah.</p> <p>10 Q. Is that somebody else you talked to in preparing for 11 this deposition?</p> <p>12 A. No. That was somebody that I talked to between 2009 13 and 2011.</p> <p>14 Q. All right. So you learned some information from 15 Ms. Pell sort of on the job, if you will?</p> <p>16 A. That's correct.</p> <p>17 Q. Okay. What did you learn from Ms. Pell on the job 18 relating to Kellogg's and animal welfare?</p> <p>19 A. She was the first one that I had talked to about 20 anything related to animal welfare. We sat down with 21 -- she had invited me to a conversation with the Humane 22 Society.</p> <p>23 Q. When was that?</p> <p>24 A. That would have been approximately 2009, '10.</p> <p>25 Q. Okay. What was Ms. Pell's position?</p>

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<p style="text-align: right;">38</p> <p>1 A. She was in quality as well.</p> <p>2 Q. Like Mr. Bigelow?</p> <p>3 A. That's correct.</p> <p>4 Q. Did she have any particular responsibilities related to</p> <p>5 animal welfare?</p> <p>6 A. She was kind of the start of the animal welfare group.</p> <p>7 And then once it became so big, then they created the</p> <p>8 Adaire Putnam's group in 2011. So they kind of held</p> <p>9 that as a quality responsibility and then until they</p> <p>10 formed the group in 2011.</p> <p>11 Q. So before 2011, animal welfare was -- you're saying it</p> <p>12 was part of Ms. Pell's responsibilities within the</p> <p>13 quality group?</p> <p>14 A. That's correct.</p> <p>15 Q. Okay. Do you know how long Ms. Pell was with the</p> <p>16 quality group?</p> <p>17 A. I don't know how long she -- I know she was there from</p> <p>18 2009. She just -- she's retired now, but --</p> <p>19 Q. How far back does Ms. Pell go?</p> <p>20 A. Yeah. I don't know that.</p> <p>21 Q. Okay. Do you know if you talked to anybody who had any</p> <p>22 exposure to animal welfare issues prior to 2009?</p> <p>23 A. I've not spoken to anybody.</p> <p>24 Q. Okay. So if I ask you questions about Kellogg's and</p> <p>25 animal welfare during the period prior to 2009, your</p>	<p style="text-align: right;">40</p> <p>1 about when animal welfare -- or excuse me. UEP or</p> <p>2 United Egg Producers documents had come out as far as</p> <p>3 what that certification is. That would have been I</p> <p>4 think 2002 timeframe. And just other correspondence</p> <p>5 between what I'll say social pressures we've had, when</p> <p>6 they started, what are we doing about it, is what I've</p> <p>7 kind of uncovered.</p> <p>8 Q. From the documents?</p> <p>9 A. From the documents.</p> <p>10 Q. You haven't talked to anybody about the UEP Certified</p> <p>11 Program prior to 2009?</p> <p>12 A. No.</p> <p>13 Q. Have we covered what you learned from Adaire Putnam?</p> <p>14 A. Yes, we have.</p> <p>15 Q. Okay. Chris Charles. You spoke to Chris Charles in</p> <p>16 preparation for this deposition?</p> <p>17 A. Yes.</p> <p>18 Q. And what is Chris Charles' position?</p> <p>19 A. She's the vice president of communications.</p> <p>20 Q. Do you know how long she's had that position?</p> <p>21 A. I do not know how long she's --</p> <p>22 Q. Did she have the position when you took over egg buying</p> <p>23 in 2009?</p> <p>24 A. I don't know.</p> <p>25 Q. What did you discuss with Ms. Charles in preparing for</p>
<p style="text-align: right;">39</p> <p>1 answer would have to be I don't know.</p> <p>2 MR. CAMPBELL: Objection.</p> <p>3 BY MR. GREENE:</p> <p>4 Q. Unless -- you can answer unless your Counsel tells you</p> <p>5 not to answer.</p> <p>6 MR. CAMPBELL: You can answer.</p> <p>7 THE WITNESS: Okay. The information that I</p> <p>8 would have found, I would have found it within</p> <p>9 documents either presented to me or within searching as</p> <p>10 being a 30(b)(6) witness. That's the way I would have</p> <p>11 found out about it.</p> <p>12 BY MR. GREENE:</p> <p>13 Q. You've seen documents that refer to animal welfare; is</p> <p>14 that correct?</p> <p>15 A. That's correct.</p> <p>16 Q. Okay. Apart from the documents you've seen relating to</p> <p>17 animal welfare, do you have any other source of</p> <p>18 information about animal welfare at Kellogg prior to</p> <p>19 2009?</p> <p>20 A. No.</p> <p>21 Q. What documents have you seen that relate to animal</p> <p>22 welfare at Kellogg's prior to 2009?</p> <p>23 A. Within the file from previous buyers that have been</p> <p>24 kept around there is information about cage-free.</p> <p>25 There are e-mails for that. There was also documents</p>	<p style="text-align: right;">41</p> <p>1 your 30(b)(6) deposition?</p> <p>2 A. There was a document with her name on it that had</p> <p>3 stated whether or not we should be going to UEP or</p> <p>4 United Egg Producers certified. And I just wanted to</p> <p>5 see if she had any recollection of the document.</p> <p>6 Q. Do you remember what the document was?</p> <p>7 A. It was just a matter of -- it was just stating where</p> <p>8 are we with the UEP certification, are we going this</p> <p>9 way or not.</p> <p>10 Q. And what did she tell you about the document?</p> <p>11 A. She didn't have any recollection of it.</p> <p>12 Q. Did you discuss anything else with Ms. Charles?</p> <p>13 A. I did not.</p> <p>14 Q. We talked about Mr. Bigelow. Laura Hafner.</p> <p>15 A. Uh-huh.</p> <p>16 Q. You've talked to Laura Hafner in preparation for your</p> <p>17 deposition?</p> <p>18 A. Yes.</p> <p>19 Q. And what is Ms. Hafner's position?</p> <p>20 A. She's finance, procurement finance.</p> <p>21 Q. What does that mean, procurement finance?</p> <p>22 A. She helps the procurement team within our budgeting, as</p> <p>23 well as when we have actual prices come in and volume</p> <p>24 variances. So she kind of reports back to each of our</p> <p>25 business units on the variations within our pricing</p>

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<p style="text-align: right;">42</p> <p>1 models throughout the year.</p> <p>2 Q. All right. I'm not sure I fully understand. So let me</p> <p>3 see if, leaving aside the deposition, if I can</p> <p>4 understand the role of this financial team. What's the</p> <p>5 position title for Laura Hafner?</p> <p>6 A. I would say her position title would be procurement</p> <p>7 finance manager.</p> <p>8 Q. All right. Did you work -- when you were the egg</p> <p>9 buyer, did you work with a procurement finance manager?</p> <p>10 A. I did.</p> <p>11 Q. Can you explain how you would work during your period</p> <p>12 as the egg buyer with the procurement finance manager.</p> <p>13 A. Yes. They would actually develop our budget for the --</p> <p>14 if you want to go to the beginning of the year. They</p> <p>15 would develop the budget. I would put in my egg</p> <p>16 prices. They would then calculate or analyze what was</p> <p>17 our prices the previous year versus what I put it in.</p> <p>18 Is it inflationary, deflationary. Then they would</p> <p>19 report that back to the business unit. Then we would</p> <p>20 do that same cycle every month throughout the year to</p> <p>21 see where we netted out for each period. So her</p> <p>22 function behind why I've gone to her was because we</p> <p>23 were looking at previous year's financial information</p> <p>24 as well as previous year's volume. And I knew that the</p> <p>25 financial team would have the background information</p>	<p style="text-align: right;">44</p> <p>1 Company's Objections and Amended Answers to Defendants'</p> <p>2 First Set of Interrogatories. Do you see that?</p> <p>3 A. Yes, I do.</p> <p>4 Q. And this is a -- the amended answers themselves run</p> <p>5 about six pages. And then there is a certificate of</p> <p>6 service, and then there's an Exhibit A with a lot of</p> <p>7 documents. I'm going to just focus you on the answer</p> <p>8 to interrogatory No. 2, which is on page 5 and 6. And</p> <p>9 with any document, you can always look at whatever</p> <p>10 portion you would like.</p> <p>11 First of all, on page 6, this is a /S/ signed</p> <p>12 by John Kinney of Jenner & Block. Do you see that?</p> <p>13 A. I do.</p> <p>14 Q. Did you ever meet Mr. Kinney?</p> <p>15 A. No.</p> <p>16 Q. And have you ever spoken to Mr. Kinney?</p> <p>17 A. No, I have not.</p> <p>18 Q. The response to interrogatory No. 3 says identify all</p> <p>19 persons other than Counsel and Counsel staff and</p> <p>20 documents from which you obtained information directly</p> <p>21 or indirectly that you used in order to answer</p> <p>22 interrogatories 1 and 2. And the response to that</p> <p>23 interrogatory says, subject to and without waiving the</p> <p>24 objections described in sections 1 and 2 and its</p> <p>25 responses to interrogatories 1 and 2, Plaintiff states</p>
<p style="text-align: right;">43</p> <p>1 for all of that. So that's why I've kind of went to</p> <p>2 her. And Carrie Smith is the same, the same role. So</p> <p>3 both of them have pulled all of the previous data from</p> <p>4 1999 to 2009.</p> <p>5 Q. So their assistance was -- would it be fair to say that</p> <p>6 their assistance was focused on helping you get</p> <p>7 financial data from the past?</p> <p>8 A. That is correct.</p> <p>9 Q. Okay. Anything else beyond assembling financial data</p> <p>10 for you?</p> <p>11 A. No.</p> <p>12 Q. You didn't discuss kind of -- you didn't discuss</p> <p>13 conclusions with them or strategies?</p> <p>14 A. No.</p> <p>15 MR. GREENE: How long have we been going</p> <p>16 here? Close to an hour? Why don't we take a break.</p> <p>17 VIDEOGRAPHER: Going off the record at</p> <p>18 10:14 a.m.</p> <p>19 (Recess taken)</p> <p>20 VIDEOGRAPHER: We're back on the record at</p> <p>21 10:25 a.m.</p> <p>22 (Exhibit No. 2 marked)</p> <p>23 BY MR. GREENE:</p> <p>24 Q. Good morning, Mr. Neal. I'm going to direct your</p> <p>25 attention to Neal Exhibit 2. This is the Kellogg</p>	<p style="text-align: right;">45</p> <p>1 that Matthew Neal, strategic manager in raw</p> <p>2 ingredients, provided information used in connection</p> <p>3 with Plaintiffs' responses to the foregoing</p> <p>4 interrogatories.</p> <p>5 Mr. Neal, did you provide information that</p> <p>6 was used in connection with Kellogg's responses to</p> <p>7 these interrogatories?</p> <p>8 A. Yes, I did.</p> <p>9 Q. And with whom did you discuss -- just a yes -- it's an</p> <p>10 identify question. With whom did you discuss these</p> <p>11 interrogatories?</p> <p>12 A. I guess it would have been Connie Macy. I guess I</p> <p>13 don't understand the question completely.</p> <p>14 Q. Well, the question -- the interrogatory responses</p> <p>15 signed by Mr. Kinney --</p> <p>16 A. Yep.</p> <p>17 Q. -- there are -- if you go back, there are two</p> <p>18 substantive interrogatories about price -- about</p> <p>19 pricing.</p> <p>20 A. Okay.</p> <p>21 Q. Interrogatory No. 1, interrogatory No. 2. There are</p> <p>22 responses to those interrogatories. And then</p> <p>23 interrogatory No. 3 asks who are the people who</p> <p>24 provided information in connection with the</p> <p>25 interrogatories. And my question is did you provide</p>

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<p style="text-align: right;">46</p> <p>1 information in connection with the interrogatories and,</p> <p>2 if so, who did you discuss these interrogatories with.</p> <p>3 A. For the interrogatory No. 3, it's all on purchases and</p> <p>4 pricing, correct? Is how I see this.</p> <p>5 Q. Well, it has to do with -- the response simply says</p> <p>6 that you provided information used in connection with</p> <p>7 Plaintiffs' responses to the foregoing interrogatories.</p> <p>8 So I would interpret that as interrogatories 1 and 2.</p> <p>9 So you can look at 1 and 2, if you like.</p> <p>10 A. I will.</p> <p>11 Q. Take your time.</p> <p>12 A. So now if you don't mind just repeating the question.</p> <p>13 Q. Did you provide information that was used in connection</p> <p>14 with Plaintiffs' responses, Kellogg's responses, to</p> <p>15 interrogatories 1 and 2?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And with whom did you discuss the responses to</p> <p>18 interrogatories 1 and 2?</p> <p>19 A. It would have been Laura Hafner, Carrie Smith, as well</p> <p>20 as Kelly Tobey.</p> <p>21 Q. Did you discuss the responses, again, yes or no</p> <p>22 question, with anybody -- with Mr. Kinney?</p> <p>23 A. No.</p> <p>24 Q. Did you discuss the responses with anyone at Jenner &</p> <p>25 Block?</p>	<p style="text-align: right;">48</p> <p>1 Q. All right. The next sentence then reads, beginning in</p> <p>2 or about early 2000, Plaintiff states that it shifted</p> <p>3 its egg purchases to a grain-based pricing formula. Do</p> <p>4 you see that?</p> <p>5 A. I do.</p> <p>6 Q. Okay. Let's start with the latest and we'll go back.</p> <p>7 Beginning in or about early 2000 --</p> <p>8 MR. CAMPBELL: I'm going to have to object.</p> <p>9 MR. GREENE: Yeah.</p> <p>10 MR. CAMPBELL: I'm afraid you misspoke. You</p> <p>11 said 2000. In fact, it's 2009 if you look at the --</p> <p>12 MR. GREENE: I'm sorry. I think Mr. Campbell</p> <p>13 is right because the court reporter agrees with him.</p> <p>14 And if the two of them are on the same side, I'm in bad</p> <p>15 shape.</p> <p>16 BY MR. GREENE:</p> <p>17 Q. All right. It says, beginning in or about early 2009,</p> <p>18 Plaintiff states that it shifted its egg purchases to a</p> <p>19 grain-based pricing formula. Do you see that?</p> <p>20 A. I do.</p> <p>21 Q. Okay. I want to focus on that period, the 2009 forward</p> <p>22 period that's covered by that sentence. Is that</p> <p>23 correct that since early 2009 Kellogg has been</p> <p>24 purchasing egg products on a grain-based formula?</p> <p>25 A. That is correct.</p>
<p style="text-align: right;">47</p> <p>1 A. No.</p> <p>2 Q. So as far as you know, you didn't have any</p> <p>3 communication with Jenner & Block regarding the</p> <p>4 responses to interrogatories 1 and 2?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. Now, at the end -- interrogatory No. 2, I'm not</p> <p>7 going to read it. If I read it, it's a long -- it's a</p> <p>8 long statement into the record. But it asks a question</p> <p>9 about pricing. Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And the second paragraph of the response states,</p> <p>12 subject to and without waiving these objections and</p> <p>13 subject to further investigation, Plaintiff states that</p> <p>14 during the period covered by the complaint, it did not</p> <p>15 make egg purchases from Defendants based at prices each</p> <p>16 supplier set that were not based in whole or in part on</p> <p>17 an Urner Barry price quotation. Do you see that?</p> <p>18 A. No, I don't. What --</p> <p>19 Q. I'm sorry. I'm on page 6.</p> <p>20 A. Oh, I thought you were on 5. Sorry. Okay.</p> <p>21 MR. CAMPBELL: Is there a question pending?</p> <p>22 MR. GREENE: He wanted a chance to read it.</p> <p>23 MR. CAMPBELL: Okay.</p> <p>24 THE WITNESS: Okay. Go ahead.</p> <p>25 BY MR. GREENE:</p>	<p style="text-align: right;">49</p> <p>1 Q. Okay. And since that period, early 2009, has Kellogg's</p> <p>2 been purchasing all its egg products on a grain-based</p> <p>3 formula?</p> <p>4 A. Yes.</p> <p>5 Q. And when did that begin, that is, purchasing on a</p> <p>6 grain-based formula?</p> <p>7 A. It would have been 2009.</p> <p>8 Q. Do you know when in 2009?</p> <p>9 A. I would -- the way that the contract was written, it</p> <p>10 would have been January of 2009 it would have started.</p> <p>11 Q. What is a grain-based pricing formula?</p> <p>12 A. So the way that the grain-based -- excuse me.</p> <p>13 Grain-based pricing formula works is we actually are</p> <p>14 able to buy the feed for the chickens. So the corn or</p> <p>15 the soybean meal or both. And with that, then that</p> <p>16 gets converted into what the feed cost is, and then it</p> <p>17 also goes into what a liquid price of whole eggs would</p> <p>18 be. And then for our -- for Kellogg's, we use liquid</p> <p>19 whole, we also use dried whole, and we use dried</p> <p>20 whites.</p> <p>21 So with that, within that calculation or</p> <p>22 formula, it will give you a liquid price off of the</p> <p>23 grain that we purchased for the corn and soybean meal.</p> <p>24 Then it also goes into the drieds and knowing that</p> <p>25 there's conversion for drying, the powders -- or excuse</p>

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<p style="text-align: right;">50</p> <p>1 me. The liquid.</p> <p>2 So with that, they actually utilize the Urner</p> <p>3 Barry market as well for Michael Foods' calculation.</p> <p>4 And they take the previous 90 days of Urner Barry for</p> <p>5 what dried egg whites and dried egg yolks are, and they</p> <p>6 get a percentage there of what that ratio is. And that</p> <p>7 ratio, then they also have the grain-based.</p> <p>8 So whatever that price would be for</p> <p>9 grain-based knowing that the consistency of an egg is</p> <p>10 65/35, 65 egg whites, 35 percent yolks. They would</p> <p>11 then convert the grain-based using the Urner Barry</p> <p>12 ratio.</p> <p>13 So if -- it's kind of hard to explain it in</p> <p>14 -- out in the open. But if I could show you.</p> <p>15 So if it was .58 cents for liquid, off of the</p> <p>16 grain-based, they would also take the Urner Barry dried</p> <p>17 portion of that, what the ratio is, and accommodate</p> <p>18 that into what the grain-based would be to convert it</p> <p>19 into a dried price using the Urner Barry ratio which is</p> <p>20 how they come up with their grain-based fee -- or</p> <p>21 excuse me. The dried grain-based pricing.</p> <p>22 Q. You're not going to be surprised if I have some</p> <p>23 follow-up questions to that.</p> <p>24 A. No, not at all.</p> <p>25 Q. Let's start with identifying the products, the egg</p>	<p style="text-align: right;">52</p> <p>1 A. It's just a flat price.</p> <p>2 Q. Flat price?</p> <p>3 A. Yes.</p> <p>4 Q. And by "flat price," what do you mean?</p> <p>5 A. The buyer would be giving -- it's Michael Foods is the</p> <p>6 supplier as well. But be giving them a volume, and</p> <p>7 then Michael Foods would price it off of that volume.</p> <p>8 Now, depending on how far he wants to go out,</p> <p>9 if he wants to go the whole year, six months, whatever,</p> <p>10 that's -- it would be a volume commitment.</p> <p>11 Q. So I want to understand sort of categories of pricing.</p> <p>12 If a price is set at a fixed amount for a year, you</p> <p>13 would call that a flat price?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And that's different than a grain-based price,</p> <p>16 correct?</p> <p>17 A. That's correct.</p> <p>18 Q. And is that also different than an Urner Barry-based</p> <p>19 price?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. So we have three categories of pricing?</p> <p>22 A. That's correct.</p> <p>23 Q. Flat price, grain price -- grain-based price, Urner</p> <p>24 Barry-based price?</p> <p>25 A. That's correct.</p>
<p style="text-align: right;">51</p> <p>1 products that Kellogg buys.</p> <p>2 A. Okay.</p> <p>3 Q. Can we sort of list the categories of egg products that</p> <p>4 Kellogg buys?</p> <p>5 A. Yes. Liquid whole eggs, dried whole eggs, and then</p> <p>6 dried egg whites.</p> <p>7 Q. Three categories of products?</p> <p>8 A. That's correct.</p> <p>9 Q. And what does Kellogg's use -- withdrawn. Are these</p> <p>10 same three categories the same three categories that</p> <p>11 Kellogg's has been buying of egg products back to 1999?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. No others that would have been purchased earlier</p> <p>14 that aren't included on that list?</p> <p>15 A. Nothing earlier.</p> <p>16 Q. Has anything been added?</p> <p>17 A. Yes.</p> <p>18 Q. What's been added?</p> <p>19 A. Egg patties.</p> <p>20 Q. When did you start adding egg patties?</p> <p>21 A. 2013. 2012. 2012 would have been the start.</p> <p>22 Q. Are these also priced on grain-based pricing?</p> <p>23 A. Those did not start to be -- they weren't started that</p> <p>24 way. I'm not certain if they're there today.</p> <p>25 Q. How are they priced?</p>	<p style="text-align: right;">53</p> <p>1 MR. CAMPBELL: I object. That</p> <p>2 mischaracterizes the testimony.</p> <p>3 BY MR. GREENE:</p> <p>4 Q. Did I mischaracterize your testimony?</p> <p>5 A. I don't know.</p> <p>6 MR. GREENE: Well, the witness -- I'm asking</p> <p>7 the witness. I just want to understand from the</p> <p>8 witness.</p> <p>9 BY MR. GREENE:</p> <p>10 Q. Are those the three categories?</p> <p>11 A. Those are three different ways to price things. Yes.</p> <p>12 Q. Okay. Are there other ways to price egg products?</p> <p>13 A. Not that I know of, no.</p> <p>14 Q. Okay. What does Kellogg's use liquid whole eggs to</p> <p>15 make?</p> <p>16 A. Eggo waffles.</p> <p>17 Q. Does it use liquid whole eggs to make anything else?</p> <p>18 A. No.</p> <p>19 Q. And where are the Eggo waffles produced?</p> <p>20 A. There's several plants. There's Atlanta, San Jose,</p> <p>21 Blue Anchor, and --</p> <p>22 Q. Where is Blue Anchor?</p> <p>23 A. New Jersey.</p> <p>24 Q. Okay.</p> <p>25 A. Rossville.</p>

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<p style="text-align: right;">54</p> <p>1 Q. What does Kellogg's use dried whole eggs to make?</p> <p>2 A. Dried whole eggs? It would be within Pop-Tarts or</p> <p>3 Keebler.</p> <p>4 Q. Cookies?</p> <p>5 A. That's correct. There's lots of different brands of</p> <p>6 cookies. But yes.</p> <p>7 Q. Okay. And where are the products made that use dried</p> <p>8 whole eggs?</p> <p>9 A. I believe those are for MorningStar Farms.</p> <p>10 Q. What is MorningStar Farms?</p> <p>11 A. That is a meat substitute, like veggie burgers.</p> <p>12 Q. I may have -- my questions may have been confusing.</p> <p>13 But you mentioned Pop-Tarts and Keebler cookies, right?</p> <p>14 A. That's correct.</p> <p>15 Q. And then you mentioned that those were made for</p> <p>16 MorningStar Farms?</p> <p>17 A. No.</p> <p>18 Q. I'm sorry. Then I got it wrong. What's the</p> <p>19 relationship between Pop-Tarts, Keebler cookies, and</p> <p>20 MorningStar Farms?</p> <p>21 A. They all contain eggs.</p> <p>22 Q. Okay. Good.</p> <p>23 MR. CAMPBELL: Made by Kellogg.</p> <p>24 THE WITNESS: Made by Kellogg. Right.</p> <p>25 BY MR. GREENE:</p>	<p style="text-align: right;">56</p> <p>1 it's chicken substitute.</p> <p>2 Q. Is this something I would find if I was going to the</p> <p>3 grocery store?</p> <p>4 A. Absolutely, yes.</p> <p>5 Q. Where would I find the MorningStar Farms products?</p> <p>6 A. In the freezer section.</p> <p>7 Q. So breakfast items that are meatless?</p> <p>8 A. They probably do have breakfast items, but it's more</p> <p>9 like hamburgers, more of a meal entree-type.</p> <p>10 Q. Okay. Meat substitute meals?</p> <p>11 A. Yes.</p> <p>12 Q. And they use the dried egg whites?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Does Kellogg's use dried egg whites to make</p> <p>15 anything else other than MorningStar Farms products?</p> <p>16 A. I'm sure they do. I don't have it all.</p> <p>17 Q. Where are the MorningStar Farms products made?</p> <p>18 A. Clearfield, Utah; Zanesville.</p> <p>19 Q. Yep.</p> <p>20 A. Those are the two.</p> <p>21 Q. I see references in the documents to Worthington.</p> <p>22 A. Yes.</p> <p>23 Q. What is Worthington?</p> <p>24 A. Worthington would be another brand of MorningStar</p> <p>25 Farms. It's also -- that would be another place for</p>
<p style="text-align: right;">55</p> <p>1 Q. Okay. So when I asked the dried whole eggs are made --</p> <p>2 you said they're used in Pop-Tarts and Keebler cookies?</p> <p>3 A. That's correct.</p> <p>4 Q. Are they also used in products made for MorningStar</p> <p>5 Farms?</p> <p>6 A. Not for dried whole eggs.</p> <p>7 Q. Okay.</p> <p>8 A. Those are the two main areas for dried whole eggs.</p> <p>9 Q. The Pop-Tarts and the Keebler cookies?</p> <p>10 A. That's correct.</p> <p>11 Q. Okay. And where are the Pop-Tarts and Keebler cookies</p> <p>12 manufactured?</p> <p>13 A. Pop-Tarts would be Grand Rapids, Michigan; Pikeville,</p> <p>14 Pennsylvania -- or Muncy, Pennsylvania; and Pikeville I</p> <p>15 think it's Kentucky.</p> <p>16 Q. Okay. And then the last category was dried egg whites?</p> <p>17 A. That's correct.</p> <p>18 Q. Okay. What are dried egg whites used to produce?</p> <p>19 A. And that's where -- MorningStar Farms.</p> <p>20 Q. Okay. Now I got it. All right. And what is</p> <p>21 MorningStar Farms?</p> <p>22 A. It is like a meat substitute product. It's -- they do</p> <p>23 -- instead of like ham, it's -- they call it lam. You</p> <p>24 know, there's no meat products. There's veggie</p> <p>25 burgers. There's chicken. It's not real chicken, but</p>	<p style="text-align: right;">57</p> <p>1 eggs as well.</p> <p>2 Q. Is Worthington a location, or is it a product name?</p> <p>3 A. Both.</p> <p>4 Q. Okay.</p> <p>5 A. It's -- it's a product name, and they named it after</p> <p>6 the location.</p> <p>7 Q. Where is Worthington?</p> <p>8 A. It's Worthington, Ohio, I believe.</p> <p>9 Q. So that's also a place where the dried egg whites go?</p> <p>10 A. I believe that is dried egg whites.</p> <p>11 Q. All right. So let me ask -- let me go back to the</p> <p>12 grain-based pricing. As of 2009, Kellogg's buys all</p> <p>13 these categories under grain-based pricing; is that</p> <p>14 correct?</p> <p>15 A. That's correct.</p> <p>16 Q. And let me see if I -- let's first take the category of</p> <p>17 whole eggs, liquid whole eggs. Does the -- does Urner</p> <p>18 Barry pricing play any role in the calculation of a</p> <p>19 grain-based price for liquid whole eggs?</p> <p>20 A. Yes. Oh, for Urner Barry? No.</p> <p>21 Q. All right. In the case of liquid whole eggs, there's</p> <p>22 no need to allocate between whites and yolks, correct?</p> <p>23 A. That's correct. That's all strictly just the</p> <p>24 grain-based.</p> <p>25 Q. So let's focus on liquid whole eggs for a moment, and</p>

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16 (Pages 58 to 61)

<p style="text-align: right;">58</p> <p>1 let me see if I can take you back through. You had a</p> <p>2 long helpful response, but it was a lot to take in.</p> <p>3 When you're dealing with liquid whole eggs, a</p> <p>4 grain-based price that Kellogg's would pay would be</p> <p>5 based on what factors?</p> <p>6 A. For liquid whole eggs it would take into effect the</p> <p>7 corn market. So the corn that we purchase.</p> <p>8 Q. The cost of corn?</p> <p>9 A. The cost of corn. The cost of soybean meal. And then</p> <p>10 there's another category that they also put on there.</p> <p>11 So what we do is they convert those prices that we have</p> <p>12 for corn and soybean meal, convert that into feed, what</p> <p>13 one ton of feed would cost.</p> <p>14 That ton of feed cost then goes into what</p> <p>15 does it -- so that feed feeds so many chickens which</p> <p>16 will produce a dozen eggs. So then you've got the</p> <p>17 price of what a dozen eggs cost.</p> <p>18 Then for Michael Foods, they like to put it</p> <p>19 into a case which is 30 dozen. So they end up</p> <p>20 multiplying that by 30 dozen. And then so what does 30</p> <p>21 dozen eggs cost. And then with that, then they give</p> <p>22 you the calculation of what 30 dozen eggs -- how many</p> <p>23 pounds -- or the conversion of how many pounds of</p> <p>24 liquid eggs that would equate to. And then on top of</p> <p>25 that, they would add their processing and their</p>	<p style="text-align: right;">60</p> <p>1 Q. When Kellogg's is buying egg products under a</p> <p>2 grain-based formula -- I should say when Kellogg's is</p> <p>3 buying liquid whole eggs under a grain-based formula,</p> <p>4 is the price that Kellogg's is paying affected by the</p> <p>5 supply of layer hens?</p> <p>6 A. No.</p> <p>7 Q. Now, you mentioned that when you're dealing with the</p> <p>8 whites, you have the Urner Barry calculations come in</p> <p>9 -- let me go back for a moment.</p> <p>10 When Kellogg's is buying liquid whole eggs</p> <p>11 under a grain-based formula, is the price that</p> <p>12 Kellogg's is paying affected by the Urner Barry prices</p> <p>13 for any egg products?</p> <p>14 A. Yes.</p> <p>15 Q. Liquids whole eggs?</p> <p>16 A. No.</p> <p>17 Q. Okay. Let me ask again then. When Kellogg's is buying</p> <p>18 liquid whole eggs under a grain-based formula, is the</p> <p>19 price Kellogg's is paying affected by the Urner Barry</p> <p>20 price of any -- of any egg products?</p> <p>21 A. You've stated liquid whole eggs. Then you say any egg</p> <p>22 products. So I want to make sure that -- for liquid</p> <p>23 whole eggs, the Urner Barry is not utilized.</p> <p>24 Q. Right. And when you say Urner Barry is not utilized, I</p> <p>25 just want to be clear, the Urner Barry price of shell</p>
<p style="text-align: right;">59</p> <p>1 freight.</p> <p>2 Q. So there is a -- is there a formula then that's used?</p> <p>3 A. There is.</p> <p>4 Q. Okay. And the formula I assume has various</p> <p>5 mathematical conversion factors in it.</p> <p>6 A. That's correct.</p> <p>7 Q. But the inputs that go into the formula would be the</p> <p>8 cost of corn, the cost of soybean meal, a processing</p> <p>9 cost, a freight cost. Any other inputs into the</p> <p>10 formula?</p> <p>11 A. Now, when you say "inputs," there are certain things</p> <p>12 that Kellogg's can change from an input which would</p> <p>13 only be the corn and the soybean meal. The conversion</p> <p>14 is locked by -- you know, that's been developed by</p> <p>15 Michael Foods, as well as the freight are prices that</p> <p>16 Michael Foods gives. But the only things that can be</p> <p>17 changed is from the commodity market, the two, the corn</p> <p>18 and the soybean meal for liquid.</p> <p>19 Q. Liquid whole eggs?</p> <p>20 A. Yes.</p> <p>21 Q. So when you're buying egg products -- liquid whole eggs</p> <p>22 under a grain-based formula, is the price paid by</p> <p>23 Kellogg's affected by the Urner Barry price of shell</p> <p>24 eggs?</p> <p>25 A. No.</p>	<p style="text-align: right;">61</p> <p>1 eggs is not utilized, correct?</p> <p>2 A. That's correct.</p> <p>3 Q. The Urner Barry price for egg whites is not utilized,</p> <p>4 correct?</p> <p>5 A. For dried egg whites?</p> <p>6 Q. When you're buying liquid whole eggs --</p> <p>7 A. Yep.</p> <p>8 Q. -- you don't use the Urner Barry price for liquid whole</p> <p>9 eggs, correct?</p> <p>10 A. No.</p> <p>11 Q. You don't use the Urner Barry price for egg whites?</p> <p>12 A. Liquid or dried?</p> <p>13 MR. CAMPBELL: He's referring only to liquid.</p> <p>14 THE WITNESS: Okay. So it's all liquid.</p> <p>15 Then no.</p> <p>16 BY MR. GREENE:</p> <p>17 Q. When you're buying liquid whole eggs --</p> <p>18 A. Because I just want to clarify as well. Because we've</p> <p>19 gone through the three products that we -- whenever you</p> <p>20 say whites, I'm immediately going to dried. I don't</p> <p>21 want to do that. I know that you're going liquid.</p> <p>22 Okay.</p> <p>23 Q. I'm asking questions about when Kellogg's purchases</p> <p>24 liquid whole eggs.</p> <p>25 A. Yes.</p>

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17 (Pages 62 to 65)

<p style="text-align: right;">62</p> <p>1 Q. Is the price that Kellogg's pays affected by the Urner 2 Barry price for any egg products?</p> <p>3 A. No.</p> <p>4 Q. Now, we talked -- now I want to talk about buying 5 the --</p> <p>6 A. Dried.</p> <p>7 Q. -- egg whites, the dried egg whites. Well, actually, 8 go back. If I ask the same question about dried whole 9 eggs, same series of questions, when Kellogg's is 10 purchasing dried whole eggs under a grain-based 11 formula, is the price that Kellogg's pays, is that 12 affected by the Urner Barry price of shell eggs?</p> <p>13 A. For dried whole eggs, no.</p> <p>14 Q. Okay. When Kellogg's is purchasing dried whole eggs 15 under a grain-based formula, is the price that 16 Kellogg's pays affected by the Urner Barry price for 17 any egg products?</p> <p>18 A. No.</p> <p>19 Q. Okay. When Kellogg's is buying dried whole eggs under 20 a grain-based formula, is the price that Kellogg's pays 21 affected by the supply of layer hens?</p> <p>22 A. No.</p> <p>23 Q. Okay. So now we go to the whites. Now, in the case of 24 the whites, the Urner Barry index for egg products, 25 that's used to allocate the cost of the egg between</p>	<p style="text-align: right;">64</p> <p>1 Q. And what is it that -- from your experience and your -- 2 as an egg buyer, what is it in the market that drives 3 the allocation of costs between whites and yolks?</p> <p>4 A. It's a myriad of things, the reason for that change. 5 It could be anything from avian flu, to exporting eggs, 6 to McDonald's coming out with egg white patties.</p> <p>7 Q. How would McDonald's coming out with egg white patties 8 affect the allocation of costs between whites and 9 yolks?</p> <p>10 A. Because with McDonald's being so large, them utilizing 11 egg whites, it would drive the price of egg whites 12 higher, and it would drive the -- with the way that the 13 model works, the yolks becomes what I would call as a 14 credit because we would have to -- Michael Foods would 15 end up having to sell the yolks. And if we have so 16 many yolks now, it drives the price or our credit down. 17 And it would drive the -- so it kind of both go in the 18 opposite direction which increases the cost of our egg 19 whites.</p> <p>20 Q. The whites and yolks are moved in offsetting 21 directions?</p> <p>22 A. That's correct.</p> <p>23 Q. If the demands for yolks goes up, then that benefits 24 buyers who are buying whites, correct?</p> <p>25 A. That's correct.</p>
<p style="text-align: right;">63</p> <p>1 yolk and white; is that correct?</p> <p>2 A. That is correct.</p> <p>3 Q. That's how the formula is used there?</p> <p>4 A. Yes.</p> <p>5 Q. Is it used in any other way in the formula?</p> <p>6 A. No.</p> <p>7 Q. Okay. And still, the -- even with the whites, the 8 primary drivers of the price, that is, even when you're 9 buying dried egg whites, when you're buying them under 10 a grain-based formula, the primary drivers of the price 11 are going to be the cost of corn and the cost of soy 12 beans, correct?</p> <p>13 A. No, that's not correct.</p> <p>14 Q. What are the primary drivers then?</p> <p>15 A. It would be the Urner Barry that drives most of that 16 cost. The changes within Urner Barry drive most of the 17 cost for dried egg whites.</p> <p>18 Q. Okay. So when you're buying dried egg whites, the cost 19 of corn would be a factor, correct?</p> <p>20 A. It would be.</p> <p>21 Q. The cost of soy beans would be a factor?</p> <p>22 A. They would be.</p> <p>23 Q. But you're saying the Urner Barry price would be a 24 factor in allocating between white and yolk?</p> <p>25 A. It drives more of a factor than the two grains.</p>	<p style="text-align: right;">65</p> <p>1 Q. Because the price of whites will go down?</p> <p>2 A. That's correct.</p> <p>3 Q. Did Kellogg's purchase egg products under grain-based 4 formulas prior to 2009?</p> <p>5 A. No.</p> <p>6 Q. With grain-based formulas, is Kellogg's able to hedge 7 the risks associated with the cost of corn and the cost 8 of soybean?</p> <p>9 A. Yes, they are.</p> <p>10 Q. And does Kellogg's, in fact, do that?</p> <p>11 A. They do.</p> <p>12 MR. GREENE: What are we on, No. 3? Neal 13 Exhibit No. 3. 14 (Exhibit No. 3 marked)</p> <p>15 BY MR. GREENE:</p> <p>16 Q. Actually, let's -- we don't -- go ahead. We'll leave 17 the cover page on it. I'll represent to you and to 18 Mr. Campbell sometimes in the production there are 19 spreadsheets that are produced natively. We like in 20 the law to be able to put numbers on everything. 21 Sometimes it's hard to put numbers on the spreadsheets. 22 So my office has just included this cover page 23 indicating the bates number of the native file. And 24 it's -- Neal Exhibit 2 is KEL00021514. 25 MR. CAMPBELL: You may have misspoke again.</p>

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18 (Pages 66 to 69)

<p style="text-align: right;">66</p> <p>1 I think it's 3, not 2.</p> <p>2 MR. GREENE: What's 3?</p> <p>3 MR. CAMPBELL: This exhibit.</p> <p>4 MR. GREENE: Neal Exhibit 3. Kellogg's,</p> <p>5 KEL00021514.</p> <p>6 BY MR. GREENE:</p> <p>7 Q. I'd like you to go ahead and turn to the actual</p> <p>8 substantive page, the second page. I'll represent to</p> <p>9 you this is from Kellogg's production. Mr. Neal, do</p> <p>10 you recognize this document?</p> <p>11 A. I really don't.</p> <p>12 Q. Have you seen it before?</p> <p>13 A. No.</p> <p>14 Q. Did you discuss it with any of the individuals that</p> <p>15 helped you prepare for your 30(b)(6) deposition?</p> <p>16 A. No.</p> <p>17 Q. Okay. And the document says on top Kellogg Company egg</p> <p>18 bid 2003. Do you see that?</p> <p>19 A. I do.</p> <p>20 Q. And it indicates in the upper left Primera Foods. Do</p> <p>21 you recognize the name Primera Foods?</p> <p>22 A. I have seen Primera Foods, yes.</p> <p>23 Q. From your experience, what was Primera Foods?</p> <p>24 A. It's my understanding that they're another egg</p> <p>25 supplier.</p>	<p style="text-align: right;">68</p> <p>1 Q. And is this -- on the left, are these a complete</p> <p>2 listing of all the plants as you go down the page, all</p> <p>3 the plants that would have used egg products in 2003?</p> <p>4 A. I don't know that.</p> <p>5 Q. Well, as you look at that list, are there any that you</p> <p>6 look at that you -- where you see one that's missing --</p> <p>7 withdrawn.</p> <p>8 As you look at the list, do you notice that</p> <p>9 any egg plants -- any plants that used egg products are</p> <p>10 missing?</p> <p>11 A. From 2003? I don't know that.</p> <p>12 Q. Okay. And the third column is the description column.</p> <p>13 And you see there's a -- there's whole egg liquid,</p> <p>14 right?</p> <p>15 A. Uh-huh.</p> <p>16 Q. We talked about that. Standard whole egg powder,</p> <p>17 right? Free flow whole egg powder; egg white powder,</p> <p>18 non-whipping; egg white powder; and egg white powder</p> <p>19 special grade. Do you see that?</p> <p>20 A. I do.</p> <p>21 Q. Do the products that are covered in this bid, do they</p> <p>22 cover all of the egg products that Kellogg's was</p> <p>23 purchasing in 2003?</p> <p>24 A. I don't know that.</p> <p>25 Q. Okay. Are there any egg products -- are you aware of</p>
<p style="text-align: right;">67</p> <p>1 Q. And you see at the top it refers to 2003. Do you see</p> <p>2 that?</p> <p>3 A. I do.</p> <p>4 Q. Okay. And is this format of this -- I guess it's a</p> <p>5 printout of a spreadsheet. Is this format something</p> <p>6 you recognize?</p> <p>7 A. I don't recognize it.</p> <p>8 Q. Have you seen documents that look like this before,</p> <p>9 even if they're not --</p> <p>10 A. Yes.</p> <p>11 Q. -- Primera in 2003?</p> <p>12 A. Yes.</p> <p>13 Q. And not -- it's not an unusual layout for a bid to</p> <p>14 Kellogg's?</p> <p>15 A. No.</p> <p>16 Q. Any reason as you're sitting here to believe that this</p> <p>17 is something other than -- withdrawn.</p> <p>18 Does it appear to you on its face to be a</p> <p>19 Primera Foods egg bid from 2003?</p> <p>20 A. Yes, it does.</p> <p>21 Q. Now, the -- at the left of Exhibit 3, again, I'm</p> <p>22 looking at the second page, there are a number of</p> <p>23 plants listed, right? I think you mentioned some of</p> <p>24 those earlier, correct?</p> <p>25 A. That's correct.</p>	<p style="text-align: right;">69</p> <p>1 any egg products that Kellogg's was purchasing in 2003</p> <p>2 that are not included in this Primera bid?</p> <p>3 A. No.</p> <p>4 Q. And you see under the annual volume and pounds you have</p> <p>5 the whole egg liquid pounds being bid is about</p> <p>6 5.7 million pounds; is that right?</p> <p>7 A. Okay.</p> <p>8 Q. The first two lines are whole egg liquid, do you see</p> <p>9 that?</p> <p>10 A. That's correct.</p> <p>11 Q. And Primera is bidding 5.7 million or so annual pounds</p> <p>12 for the liquid. Is that basically all of the Kellogg's</p> <p>13 needs for 2003?</p> <p>14 A. I don't know that, but it looks about right.</p> <p>15 Q. About 5.7 million would be in the ballpark of</p> <p>16 100 percent of the needs?</p> <p>17 A. From when I managed eggs, yeah, it sounds --</p> <p>18 Q. And as you look at the rest of these categories, based</p> <p>19 on what you know, do these appear to be approximately</p> <p>20 100 percent of the egg products needs of Kellogg's in</p> <p>21 each of the categories listed?</p> <p>22 A. I would say it's very close to what I --</p> <p>23 Q. So Primera was pretty much bidding for all of Kellogg's</p> <p>24 egg product business, correct?</p> <p>25 A. That is correct.</p>

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19 (Pages 70 to 73)

<p style="text-align: right;">70</p> <p>1 Q. In the far right column, there is a column that says 2 formula used. Do you see that?</p> <p>3 A. I do.</p> <p>4 Q. And running down the page, not the first couple lines, 5 not the whole egg liquid, and not the last set of 6 lines, the egg white powder special grade, but 7 everything from, I don't know, the fourth line or so, 8 standard whole egg powder through egg white powder it's 9 listed grain-based. Do you see that?</p> <p>10 A. I do.</p> <p>11 Q. Okay. Did Kellogg's receive grain-based proposals for 12 the purchase of egg products prior to 2009?</p> <p>13 A. I would say yes, according to the document.</p> <p>14 Q. All right. Well, do you have -- as the Rule 30(b)(6) 15 company spokesperson, do you have any reason to believe 16 Kellogg's did not receive grain-based proposals prior 17 to 2009?</p> <p>18 A. I don't.</p> <p>19 Q. Do you know how many grain-based proposals to -- 20 withdrawn.</p> <p>21 Do you know how many companies made proposals 22 to Kellogg's to sell egg products under grain-based 23 formulas prior to 2009?</p> <p>24 A. No, I do not.</p> <p>25 Q. Do you know in what years companies made grain-based</p>	<p style="text-align: right;">72</p> <p>1 A. Not until I was presented this yesterday.</p> <p>2 Q. Okay. Prior to seeing it yesterday, you hadn't seen it 3 before?</p> <p>4 A. Hadn't seen it, that's correct.</p> <p>5 Q. And you're free to review as much of the document as 6 you like, as with all of these documents. This refers 7 to eggs -- it's -- the front says Eggs Meeting 8 Objective. And I'm just going to -- just a moment. 9 Where is it? Here it is.</p> <p>10 Okay. This is a -- I'll just represent to 11 the record that 21449 to 21461 Kellogg's, which is Neal 12 Exhibit 4, is a PowerPoint produced custodian Kelly 13 Tobey with a last modified date of August 4th, 2003, 14 and a file name 2000risk.PPT. That's the background 15 information associated with the production.</p> <p>16 I want to direct your attention to -- well, 17 start with the first page. You see a reference to a 18 bullet that says vendors' current issues. Do you see 19 that?</p> <p>20 A. I do.</p> <p>21 Q. Do you know what that refers to?</p> <p>22 A. No, I don't.</p> <p>23 Q. Okay. And from the -- have you read the entire 24 document?</p> <p>25 A. I looked through it yesterday when it was presented to</p>
<p style="text-align: right;">71</p> <p>1 proposals to sell Kellogg's egg products prior to 2009?</p> <p>2 A. No.</p> <p>3 Q. Do you know why Kellogg's did not accept proposals made 4 by suppliers to sell egg products under grain-based 5 proposals prior to 2009?</p> <p>6 MR. CAMPBELL: Objection as to form. It 7 assumes that there are more than this one proposal. 8 You may answer the question.</p> <p>9 THE WITNESS: No, I don't.</p> <p>10 BY MR. GREENE:</p> <p>11 Q. Okay.</p> <p>12 A. I don't know.</p> <p>13 Q. But in preparing for your 30(b)(6), did any of the 14 people you talked to talk about Kellogg's experience 15 with grain-based proposals --</p> <p>16 A. No.</p> <p>17 Q. -- prior to 2009?</p> <p>18 A. No.</p> <p>19 MR. GREENE: Neal Exhibit 4. 20 (Exhibit No. 4 marked)</p> <p>21 BY MR. GREENE:</p> <p>22 Q. Mr. Neal, do you have -- have you had a chance to look 23 at Exhibit 4?</p> <p>24 A. Just briefly. Yes.</p> <p>25 Q. Do you recognize Exhibit 4?</p>	<p style="text-align: right;">73</p> <p>1 me.</p> <p>2 Q. All right. And you'll see on the third page there's a 3 page called eggs white update. Do you see that?</p> <p>4 A. Yep.</p> <p>5 Q. And it -- the bullets here describe the rising prices 6 of egg whites; is that fair?</p> <p>7 A. That is correct.</p> <p>8 Q. Okay. And then two pages further there's a page called 9 whole egg update.</p> <p>10 A. That's correct.</p> <p>11 Q. And the bullet here -- the bullets here again indicate 12 the rise -- the increases in the price of whole eggs; 13 is that fair?</p> <p>14 A. That is fair.</p> <p>15 Q. Okay. And then go two more pages. There's a page that 16 reads dried egg vendor issues, and there's references 17 here to Michael Foods. Do you see that?</p> <p>18 A. I do.</p> <p>19 Q. It says Michael Foods owns 40 percent of the flock that 20 supplies their eggs. Do you see that?</p> <p>21 A. I do.</p> <p>22 Q. And then it says, the remaining 60 percent is 23 contracted out. And I'm not purporting to read the 24 entire document, so I don't want to represent that. 25 But the second to last bullet says, the remaining</p>

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<p style="text-align: right;">74</p> <p>1 volume owed to Kellogg multiplied by today's market 2 price will put Michaels -- Michael Foods -- it says 3 Michaels Foods. 4 A. Yes. 5 Q. At a \$4,600,000 loss on our contract. Do you see that? 6 A. I do. 7 Q. Do you understand what that bullet is referring to? 8 A. With the increase -- the way that I take this and with 9 what I've reviewed on the document is that our 10 contracted price was lower than where the market was 11 going. And Michael Foods was going to have -- 12 essentially we were going to be 4.6 million favorable 13 to where the market would be. 14 Q. What kind of contract did Kellogg's have that's being 15 referenced in this PowerPoint? 16 A. What I would -- I'm not certain for sure. But the way 17 that it's laid out and the way that it's spoken to, it 18 would be one of the flat-based pricing to where it was 19 for maybe the contracted year and it was one flat 20 price. 21 Q. One flat price for a year? 22 A. That's correct. 23 Q. Okay. And that's different than a grain-based formula, 24 correct? 25 A. Correct.</p>	<p style="text-align: right;">76</p> <p>1 Q. Would it be fair to say that the cost of feed is a 2 significant factor in the cost of producing eggs? 3 A. For certain egg products. 4 Q. Are there any egg products for which the cost of feed 5 is not a significant factor? 6 A. I would say the egg whites -- it's not the largest 7 factor for dried egg whites. 8 Q. In any event, your takeaway from Exhibit 4 is that 9 Kellogg's had a flat price contract with its supplier, 10 correct? 11 A. Let me look through it just real quick. It doesn't 12 appear to me that it's a flat base up until probably 13 December timeframe. If you look at -- do you want me 14 to tell you the document number? 15 Q. Bates number in the lower right. 16 A. Yes. 21452. From December -- it looks like that must 17 be '03 on the right -- excuse me. Left-hand column 18 towards the bottom where you see it flat between going 19 from the bottom there. April to December of '03, those 20 look more like flat prices. February '04 up to the top 21 to December of '04. If you really look at the way that 22 those are structured, it's probably more of a market of 23 maybe Urner Barry minus an agreed-upon negotiated 24 price. Like Urner Barry minus whatever it would be, a 25 dollar. It looks like a dollar actually, is what it</p>
<p style="text-align: right;">75</p> <p>1 Q. That's different than an Urner Barry formula? 2 A. That's correct. 3 Q. When a supplier provides a flat price for a year, who 4 takes the risk of rising egg prices during that year? 5 A. The supplier would build in that risk. 6 Q. But the supplier is the one that actually -- 7 A. Holds the risk. 8 Q. -- holds the risk, correct? 9 A. That's correct. 10 Q. And when a supplier sells to Kellogg on a one-year flat 11 price contract, who holds the risk for rising grain 12 costs? 13 A. In grain-based? Is that what you're saying? 14 Q. Well, you understand that the -- withdrawn. 15 What are the key drivers that drive the cost 16 of producing eggs? 17 A. There's a lot of drivers for producing eggs. It would 18 be the crop season, so corn, soybean meal; anything to 19 do with the weather for the grains there; as well as 20 any issues that we would have with the flock of 21 chickens, whether it be the avian flu; exporting of 22 shell eggs or liquid eggs. 23 Q. Okay. 24 A. All of those would take into effect for the pricing of 25 eggs.</p>	<p style="text-align: right;">77</p> <p>1 shows here. 2 Q. Let me show you -- 3 MR. GREENE: What are we up to, 5? 4 (Exhibit No. 5 marked) 5 BY MR. GREENE: 6 Q. Let me show you Neal Exhibit 5. This is -- for the 7 record, Neal Exhibit 5 is KEL00018543, and an 8 attachment KEL00018544, which is an XLS spreadsheet 9 document. Do you recognize Exhibit 5? 10 A. I've never seen it. But I -- I'm understanding of it. 11 Q. And this is an egg bid by Bender Goodman? 12 A. Yes. 13 Q. And from your understanding, who supplied the egg 14 products for Bender Goodman? 15 A. Michael Foods. 16 Q. Okay. The egg bid has a final column that says fixed 17 price per pound delivered. Do you see that? 18 A. I do. 19 Q. Okay. And you mentioned Ms. Tobey before. The top 20 page is an e-mail from Kelly Tobey to Bob Keller dated 21 March 11, 2003, correct? 22 A. Yes. 23 Q. And this says, here is the sheet that details out your 24 award by plant with the fixed price per pound. 25 A. Yep.</p>

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<p style="text-align: right;">78</p> <p>1 Q. Do you read this as a fixed price or flat price 2 contract?</p> <p>3 A. I would.</p> <p>4 Q. Okay. And does this document tell you that the 5 contract at issue in Exhibit No. 4 was a flat price 6 contract?</p> <p>7 A. For 2003, yes.</p> <p>8 Q. So it would be the 12-month period starting in March or 9 April of 2003, correct?</p> <p>10 A. That's correct.</p> <p>11 Q. Okay. And what's happening then is that Bender Goodman 12 has entered into this one-year flat price contract in 13 early 2003, correct?</p> <p>14 A. That's correct.</p> <p>15 Q. And by August, the market price of eggs has increased 16 sharply, correct?</p> <p>17 A. Uh-huh. Yes.</p> <p>18 Q. And in the PowerPoint, Neal Exhibit 4, Kellogg's is 19 recognizing that the combination of the flat price 20 contract and the sharply increasing egg prices is going 21 to cause Michael Foods to lose \$4.6 million, correct?</p> <p>22 A. Yes.</p> <p>23 Q. So regarding the earlier testimony, the contract at 24 issue here was not an Urner Barry contract, correct?</p> <p>25 A. For 2003.</p>	<p style="text-align: right;">80</p> <p>1 during the year that the 5 and 7 would actually state 2 it's 5 months of actual, 7 months of projections for 3 the budget. So we've got 5 months in. So it would be 4 roughly the May time period. So that's what they're 5 describing there as the 5 and 7. Now --</p> <p>6 Q. I'm going to -- can I stop you? I'm never supposed to 7 interrupt. But since I'm not understanding, it's not 8 going to get better. Can you explain the 5 and 7 one 9 more time, what that means.</p> <p>10 A. Yes. I'll give you multiple times that we do it. So 11 we just had our 3 and 9 which is 3 months of actual for 12 2014 and then the 9 months of forecasted. We don't 13 know what the actual volumes are. We don't have the 14 actual pricing in.</p> <p>15 So for this, the 5 and 7, it's 5 months of 16 actual, 5 months of actual pricing and volumes, 17 7 months of forecasted volume and projected pricing as 18 well.</p> <p>19 Q. All right.</p> <p>20 A. So with that then you've got the savings piece. So 21 with Kelly Tobey's agreement with Bender Goodman slash 22 Michael Foods, there was some savings that she had 23 calculated against her budget which would have been 24 done prior to all that. So they want to make sure that 25 they can deliver the 5 and 7, which is their financial</p>
<p style="text-align: right;">79</p> <p>1 Q. From early 2003 to early 2004.</p> <p>2 A. That's correct.</p> <p>3 Q. Not an Urner Barry contract.</p> <p>4 A. I would agree, yes.</p> <p>5 Q. And then if you look at the page -- the page we were 6 just looking at, it ends by saying the 4.6 million 7 could easily exceed 6 million if prices continue to 8 rise. Do you see that?</p> <p>9 A. Not there yet.</p> <p>10 Q. It's on the page that ends 21455.</p> <p>11 A. Yes, I do see that.</p> <p>12 Q. Okay. And so we turn the next page, and it says 13 Kellogg consideration. And this is a Kellogg's 14 produced document, correct?</p> <p>15 A. That's correct.</p> <p>16 Q. It's a -- it's a proposal to Kellogg's management, 17 correct?</p> <p>18 A. That is correct.</p> <p>19 Q. All right. And it says, Kellogg's consideration, offer 20 Michael Foods some relief while ensuring we deliver our 21 5 and 7 budget savings and manage our risk for 2004. 22 Did I read that correctly?</p> <p>23 A. You did.</p> <p>24 Q. What does that mean?</p> <p>25 A. So the 5 and 7 budget, we have periodical periods</p>	<p style="text-align: right;">81</p> <p>1 period, and still manage their risk moving forward for 2 the rest of 2014 if they were to give Michael Foods 3 some relief off of the egg pricing.</p> <p>4 Q. Why were they considering giving Michael Foods relief 5 from a favorable 12-month contract?</p> <p>6 A. I can't answer that. I don't know.</p> <p>7 Q. If I'm understanding, according to this document 8 Kellogg's had negotiated a flat price for a year --</p> <p>9 A. Yep.</p> <p>10 Q. -- that was quite favorable from the buyer's 11 perspective, correct?</p> <p>12 A. That's correct.</p> <p>13 Q. It was -- the price as of August of 2014, the flat 14 price was already well below market.</p> <p>15 A. That's correct.</p> <p>16 Q. They had a contract that they could have enforced 17 through the end of the contract period through early 18 2014.</p> <p>19 A. I would agree.</p> <p>20 Q. Right. And they could have continued to purchase -- 21 MR. CAMPBELL: 2004. 22 MR. GREENE: 2004. Sorry. Yeah. And I may 23 have misspoken in the earlier question as well. 24 MR. CAMPBELL: You know, just so the record 25 is clear, Bill.</p>

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<p style="text-align: right;">82</p> <p>1 MR. GREENE: I appreciate it. And we're</p> <p>2 almost at a break, right?</p> <p>3 VIDEOGRAPHER: Yes.</p> <p>4 MR. GREENE: We need to stop the video. So</p> <p>5 we'll continue after the break.</p> <p>6 VIDEOGRAPHER: Going off the record at</p> <p>7 11:28 a.m.</p> <p>8 (Recess taken)</p> <p>9 VIDEOGRAPHER: We're back on the record at</p> <p>10 11:36 a.m.</p> <p>11 BY MR. GREENE:</p> <p>12 Q. Mr. Neal, I want to continue with Neal Exhibit 4 which</p> <p>13 is bates number KEL00021449 through 21461. And we were</p> <p>14 I think on the page that ends 21456. You were</p> <p>15 explaining to me patiently the 5 and 7 concept. So</p> <p>16 with that testimony in mind, what does it mean, offer</p> <p>17 Michael Foods some relief while ensuring we deliver our</p> <p>18 5 and 7 budget savings and manage our risk for 2004?</p> <p>19 A. I can only assume what they're meaning. I wasn't there</p> <p>20 then. But from what I understand of that is that</p> <p>21 knowing that Michael Foods is going to see a</p> <p>22 \$4.6 million increase because of the egg market going</p> <p>23 up, is that Kellogg's was going to show some relief,</p> <p>24 take off their contract of their fixed price. I don't</p> <p>25 know what the agreement was there. And then subsequent</p>	<p style="text-align: right;">84</p> <p>1 relief.</p> <p>2 Q. Okay. Meaning the amount that -- when you say</p> <p>3 "relief," would that be the amount Kellogg would pay</p> <p>4 above and beyond what it was contractually obligated</p> <p>5 to pay?</p> <p>6 A. That's correct.</p> <p>7 Q. If you flip to potential Kellogg offer 2004, the first</p> <p>8 bullet reads start a new 12-month contract</p> <p>9 January 1, 2004, on the egg whites. Do you see that?</p> <p>10 A. I do.</p> <p>11 Q. Now, I think when we looked at Exhibit 5, we noted that</p> <p>12 that was an e-mail that was sent in March of 2003.</p> <p>13 A. Okay.</p> <p>14 Q. So that appears to be -- I believe you testified a</p> <p>15 12-month contract that runs either March to March or</p> <p>16 April to April, correct?</p> <p>17 A. Yeah.</p> <p>18 Q. So at this stage, Kellogg's didn't have a contract for</p> <p>19 the portion of 2004 after the expiration of the</p> <p>20 contract identified in Exhibit 5; is that correct?</p> <p>21 A. That is correct.</p> <p>22 Q. Okay. So when the -- when 21458, slide 21458 says</p> <p>23 start a new 12-month contract January 1, 2004, on the</p> <p>24 egg whites, that would be a contract that would extend</p> <p>25 eight or nine months beyond current contracting,</p>
<p style="text-align: right;">83</p> <p>1 to that, also look at what can happen in 2004 as far as</p> <p>2 for Michael Foods and Kellogg's relationship knowing</p> <p>3 that we've given them some relief with the fixed</p> <p>4 pricing, you know, what -- if things come back, is</p> <p>5 there anything that can happen in 2004 is what I would</p> <p>6 assume on that.</p> <p>7 Q. So as you interpret the slide, Kellogg's was</p> <p>8 considering giving Michael Foods some relief and they</p> <p>9 might be looking for something in exchange?</p> <p>10 A. Yeah.</p> <p>11 Q. Okay. Why don't you turn to the next page, ends 457.</p> <p>12 And the next two pages I will point out, 457, 458, one</p> <p>13 starts potential Kellogg offer 2003 and the next one</p> <p>14 says potential Kellogg offer 2004. Do you see that?</p> <p>15 A. I do.</p> <p>16 Q. So in 2003 there are three bullets. And the third</p> <p>17 bullet reads I have an offer that would increase</p> <p>18 Michael Foods' contract by 125,000 in 2003 while still</p> <p>19 delivering 180,000 to Kellogg and fulfilling our 5 and</p> <p>20 7 commitment. Do you see that?</p> <p>21 A. I do.</p> <p>22 Q. So the part that says I have an offer that would</p> <p>23 increase Michael Foods' contract by 125,000 in 2003,</p> <p>24 how do you interpret that part of the bullet?</p> <p>25 A. I would interpret that as that would be Michael Foods'</p>	<p style="text-align: right;">85</p> <p>1 correct?</p> <p>2 A. That's correct.</p> <p>3 Q. All right. Because January 1, 2004, would bring you to</p> <p>4 December 31, 2004, correct?</p> <p>5 A. That's correct.</p> <p>6 Q. And the earlier contract ended somewhere in the March</p> <p>7 or April 2004 range, correct?</p> <p>8 A. That's correct.</p> <p>9 Q. And the bullet -- you write in the bullet -- sorry.</p> <p>10 Kellogg's writes in the second bullet, offer a floor</p> <p>11 and ceiling on the market price - Kellogg's price will</p> <p>12 remain \$1 a pound below market. What does that mean?</p> <p>13 A. That is, as I had stated before when we were looking at</p> <p>14 that one particular chart, and I'll give you the -- the</p> <p>15 page that's 21452 for the egg whites. As I had stated,</p> <p>16 that was the dollar below probably the Urner Barry</p> <p>17 market December or January -- it would have been</p> <p>18 January through December of '04, as you can see,</p> <p>19 between the contract and market price.</p> <p>20 Q. So you talked before about the -- in an earlier -- with</p> <p>21 respect to an earlier slide about the possibility that</p> <p>22 Kellogg's would grant Michael Foods some relief and get</p> <p>23 something in exchange. Do you recall that testimony?</p> <p>24 A. I do.</p> <p>25 Q. And do you read this slide 21458 as indicating that</p>

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<p style="text-align: right;">86</p> <p>1 part of that exchange would be a favorable contract for</p> <p>2 Kellogg for the remainder of 2004?</p> <p>3 A. I don't know all the background, but that's how it</p> <p>4 looks. Yes.</p> <p>5 Q. In fact, getting a price that's \$1 below market, that</p> <p>6 would be a favorable contract, correct?</p> <p>7 A. Yes.</p> <p>8 Q. Be hard to go to any new supplier and ask for a</p> <p>9 contract a dollar below market, correct?</p> <p>10 A. Yes.</p> <p>11 Q. The next slide, 21459. And I'll represent this was</p> <p>12 produced in black and white so I don't have the ability</p> <p>13 if this was originally in color to show it to you in</p> <p>14 color. Is a graph -- and again, you can look at any</p> <p>15 portion of it you like. At the bottom of the graph it</p> <p>16 reads, Kellogg's price will remain \$1 a pound under the</p> <p>17 market for all of 2004. Current contract allows for</p> <p>18 seven months of risk in 2004. Do you see that?</p> <p>19 A. I do.</p> <p>20 Q. And is the -- does that mean that -- going to the</p> <p>21 second line first, as of this moment, Kellogg's didn't</p> <p>22 have a contract for the last seven months of 2004,</p> <p>23 correct?</p> <p>24 A. At this point, I would say no, they did not.</p> <p>25 Q. So when it says current contract allows for seven</p>	<p style="text-align: right;">88</p> <p>1 was reading, it actually references Christine, then</p> <p>2 slash John, then Joe. So my guess is actually that</p> <p>3 Kelly probably reported to Christine and then Christine</p> <p>4 reports to John and John to Joe.</p> <p>5 Q. Thank you. Who is Christine?</p> <p>6 A. Christine -- it would have been Christine Wentworth.</p> <p>7 Q. What was her position?</p> <p>8 A. She probably would have been the director of raw</p> <p>9 ingredients.</p> <p>10 Q. And then John Wolf?</p> <p>11 A. Was the vice president.</p> <p>12 Q. And who's Joe?</p> <p>13 A. Joe -- probably Joe Tabiliwitz.</p> <p>14 MR. GREENE: Let's go off the record for a</p> <p>15 moment, please.</p> <p>16 VIDEOGRAPHER: Going off the record at</p> <p>17 11:48 a.m.</p> <p>18 (Recess taken)</p> <p>19 VIDEOGRAPHER: We're back on the record at</p> <p>20 11:49 a.m.</p> <p>21 MR. GREENE: What are we up to? Mark this as</p> <p>22 Neal Exhibit 6, please.</p> <p>23 (Exhibit No. 6 marked)</p> <p>24 BY MR. GREENE:</p> <p>25 Q. Neal Exhibit 6 is KEL00018055 through 18056. Now, just</p>
<p style="text-align: right;">87</p> <p>1 months of risk in 2004, what they're saying is based on</p> <p>2 our current contracts, Kellogg's is facing market risk</p> <p>3 for the last seven months of 2004, correct?</p> <p>4 A. Correct.</p> <p>5 Q. And now the discussion is getting a new contract that</p> <p>6 would eliminate that risk for the last seven months of</p> <p>7 2004, correct?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. And that contract -- under that contract,</p> <p>10 Kellogg's price would remain at \$1 under the market,</p> <p>11 correct?</p> <p>12 A. That's correct.</p> <p>13 Q. The final slide 21460 says, eggs next step. Upon</p> <p>14 approval from John, take proposal to vendor during</p> <p>15 plant visit in Wakefield, NB, on August 14th. Do you</p> <p>16 know who John is?</p> <p>17 A. That would be probably John Wolf.</p> <p>18 Q. Who is John Wolf?</p> <p>19 A. He's the vice president of procurement.</p> <p>20 Q. And at that time, what would his sort of corporate</p> <p>21 relationship had been to Kelly Tobey?</p> <p>22 A. He would have been her boss.</p> <p>23 Q. Okay. And do you know what plant or whose plant is</p> <p>24 located in Wakefield, Nebraska?</p> <p>25 A. Michael Foods. Actually, just the next bullet point I</p>	<p style="text-align: right;">89</p> <p>1 by way of background here, the cover page of this</p> <p>2 document, these are -- this is a Kellogg's produced</p> <p>3 document, I just want you to understand. The cover</p> <p>4 page is from bobeggs@aol.com to kellytobey@kellogg.com.</p> <p>5 And it has an attachment that is from bobeggs@aol.com</p> <p>6 to two individuals with Michael Foods e-mail addresses.</p> <p>7 Do you see that?</p> <p>8 A. I do.</p> <p>9 Q. But they're both Kellogg -- this is a Kellogg's</p> <p>10 produced document. So both of these pages were in the</p> <p>11 possession of Kellogg's. Do you know who</p> <p>12 bobeggs@aol.com is?</p> <p>13 A. I do.</p> <p>14 Q. Who's that?</p> <p>15 A. That's Bob Keller.</p> <p>16 Q. Who's he with?</p> <p>17 A. Bender Goodman.</p> <p>18 Q. And did there come a point following the PowerPoint</p> <p>19 discussion we saw regarding the price relief for</p> <p>20 Michael Foods that Bender Goodman and Kellogg's entered</p> <p>21 into an agreement for a new contract?</p> <p>22 A. Yes.</p> <p>23 Q. And is the new contract reflected in Neal Exhibit 6?</p> <p>24 A. Yes.</p> <p>25 Q. And if I look at the second page, which is the portion</p>

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<p style="text-align: right;">90</p> <p>1 of the e-mail from Keller to two individuals at Michael 2 Foods, it says, here are the terms of the new contract 3 with Kellogg's and all divisions thereof. Do you see 4 that?</p> <p>5 A. I do.</p> <p>6 Q. And does this page then summarize the terms of the 7 contract?</p> <p>8 A. It looks as if it does. Yes.</p> <p>9 Q. So under whole eggs, the second paragraph of the page 10 18056, it says effective with deliveries commencing 11 February 1, 2004, all existing contracts will be 12 cancelled and replaced with a supply contract to supply 13 all of Kellogg's needs, approximately 2,300,000 pounds 14 for dried whole eggs, at their locations through 15 December 31, 2004. Do you see that?</p> <p>16 A. I do.</p> <p>17 Q. So this is now a contract that runs from 18 February 1, 2004, to December 31, 2004?</p> <p>19 A. Yep.</p> <p>20 Q. And the final sentence of the paragraph indicates that 21 this will be a -- the fixed price will be \$2.43 per 22 pound delivered with the usual freight adjustments. Do 23 you see that?</p> <p>24 A. I do.</p> <p>25 Q. So in January of 2004, did Kellogg's enter into another</p>	<p style="text-align: right;">92</p> <p>1 A. I do.</p> <p>2 Q. And 8 is under -- No. 8 is whether the good was 3 purchased on a spot basis or under contract. And then 4 there are additional subparts relating to pricing. Do 5 you see that?</p> <p>6 A. I do.</p> <p>7 Q. And No. 9 has to do with negotiations between Kellogg 8 and any egg or egg products supplier regarding price. 9 And that includes other categories, supply, quality, 10 quantity, etcetera. Do you see that?</p> <p>11 A. I do.</p> <p>12 Q. And you're here as Kellogg's 30(b)(6) witness on these 13 topics?</p> <p>14 A. That is correct.</p> <p>15 Q. What portion of Kellogg's egg purchasing between the 16 period 1999 to 2008 consisted of flat pricing?</p> <p>17 A. I would say it was, from what I know and what you've 18 shown me here, is a flat pricing was for 2003 and then 19 that portion of 2004 for the egg whites or the -- 20 whatever that was here. The -- excuse me. The whole 21 eggs.</p> <p>22 Q. And you're not aware of any other flat pricing?</p> <p>23 A. I'm not aware of any other flat pricing.</p> <p>24 MR. GREENE: Let's mark this as 7. 25 (Exhibit No. 7 marked)</p>
<p style="text-align: right;">91</p> <p>1 what you would call a flat price contract with Bender 2 Goodman for the purchase of whole eggs?</p> <p>3 A. In February you said?</p> <p>4 Q. I said January in terms of when they entered into the 5 contract. But I'll withdraw the question and ask it 6 again so it's clear.</p> <p>7 In January of 2004, did Kellogg's enter into 8 what you would call a flat price contract with Bender 9 Goodman that covered the period from February 1, 2004, 10 through December 31, 2004?</p> <p>11 A. Yes. For the whole eggs.</p> <p>12 Q. And that's for the whole eggs for that eleven-month 13 period one single price, correct?</p> <p>14 A. That's correct.</p> <p>15 Q. It's not a grain-based formula, correct?</p> <p>16 A. Correct.</p> <p>17 Q. Not an Urner Barry formula?</p> <p>18 A. That's correct.</p> <p>19 Q. Go back to Neal Exhibit 1. Can you find the notice of 20 deposition? You can see that topic 8 on page 6 21 includes a topic on the types of eggs, specialty eggs, 22 or egg products purchased or otherwise acquired by 23 Kellogg for which Kellogg's is seeking damage including 24 but not limited to the following information. Do you 25 see that?</p>	<p style="text-align: right;">93</p> <p>1 MR. GREENE: Why don't you go ahead and mark 2 this at the same time, Neal Exhibit 8. 3 (Exhibit No. 8 marked)</p> <p>4 BY MR. GREENE:</p> <p>5 Q. Mr. Neal, I'm showing you what's been marked as Neal 6 Exhibit 7. This is a document that's got a bates 7 number -- it comes off an XLS. But the bates number is 8 KEL00020428. Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. It's called contract authorization at the top. What is 11 this document?</p> <p>12 A. This is a document that the buyers have to fill out to 13 fulfill an auditing trail to show that the buyer only 14 has so much that they're able to spend with a 15 particular supplier. And knowing the contract value 16 being approximately \$8.5 million, we would have to get 17 additional approval from upper management. So that's 18 where the contract authorization form comes into play.</p> <p>19 Q. And where do you see the contract value here?</p> <p>20 A. Under the heading there to the upper left that says 21 total contract value.</p> <p>22 Q. Okay. Where it says \$8,550,000?</p> <p>23 A. That is correct.</p> <p>24 Q. And you're saying that in order to commit to that much 25 money, you need to fill out some kind of authorization</p>

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<p style="text-align: right;">94</p> <p>1 form?</p> <p>2 A. That's correct.</p> <p>3 Q. This is the form?</p> <p>4 A. This is the form.</p> <p>5 Q. Who are the people indicated in the lower left, David</p> <p>6 Butler?</p> <p>7 A. David Butler would have been the buyer. Shashi, I've</p> <p>8 never even heard the name. So I don't know that name.</p> <p>9 And then John Wolf would have been the vice president</p> <p>10 of raw ingredient procurement.</p> <p>11 Q. Mr. Butler would have reported to Mr. Wolf?</p> <p>12 A. According to this, he would have reported -- the way</p> <p>13 that I do it, he would have reported to Shashi.</p> <p>14 Q. But that's not a name you recognize, the Shashi?</p> <p>15 A. That is not a name I recognize.</p> <p>16 Q. But the way you read this, Butler reports to Shashi,</p> <p>17 Shashi reports to John Wolf?</p> <p>18 A. Yes.</p> <p>19 Q. So did David Butler hold the position of egg buyer</p> <p>20 immediately before Janson Nishiko?</p> <p>21 A. No.</p> <p>22 Q. Okay. Who was -- who was in between those folks?</p> <p>23 A. It would have been Chris Chandler.</p> <p>24 Q. Okay. So it goes Butler, Chandler, Nishiko, you?</p> <p>25 A. That's correct.</p>	<p style="text-align: right;">96</p> <p>1 up, what are your objectives or goals?</p> <p>2 A. If they're not covered, you kind of look at where do</p> <p>3 you see the market, what's going to happen, what do you</p> <p>4 anticipate throughout the market. And then this is</p> <p>5 kind of, as it says there, the rationale in that box,</p> <p>6 because he also has to explain to himself of why he</p> <p>7 wants to go out and purchase this to his management.</p> <p>8 So that's his rationale, is he's expecting the egg</p> <p>9 pricing to go up. His thoughts are or his expectation</p> <p>10 because of that would be to cover or put coverage on</p> <p>11 for these particular egg products.</p> <p>12 Q. Is Mr. Butler still with the company?</p> <p>13 A. He is not.</p> <p>14 Q. Do you know when he left?</p> <p>15 A. I don't.</p> <p>16 Q. Has he been with the company since 20 -- withdrawn.</p> <p>17 You started as egg buyer in 2009, correct?</p> <p>18 A. That's correct.</p> <p>19 Q. At that time was Mr. Butler still with the company?</p> <p>20 A. No.</p> <p>21 Q. You believe he had already left?</p> <p>22 A. Yes.</p> <p>23 Q. What about Shashi Kothavale? I guess you don't</p> <p>24 recognize the name.</p> <p>25 A. I don't even recognize the name.</p>
<p style="text-align: right;">95</p> <p>1 Q. But at this point in late '06 Butler is the egg buyer?</p> <p>2 A. That's correct.</p> <p>3 Q. And under rationale, it says, Michael Foods was willing</p> <p>4 to negotiate pricing and coverage for all of 2007</p> <p>5 (meeting our budget and providing visibility). Is</p> <p>6 coverage a term that's used in procurement at</p> <p>7 Kellogg's?</p> <p>8 A. Yes.</p> <p>9 Q. What does coverage mean?</p> <p>10 A. Meaning that that particular time period has been</p> <p>11 covered or purchased for that duration. And in this</p> <p>12 case, what they show here is the contract length of</p> <p>13 January 1st of '07 through December 31st of 2007.</p> <p>14 Q. Does coverage suggest, when that term is used, any</p> <p>15 particular type of pricing term?</p> <p>16 A. No.</p> <p>17 Q. So the term coverage could be used for a flat price --</p> <p>18 A. That's --</p> <p>19 Q. -- or a grain-based price or an Urner Barry price?</p> <p>20 A. That's correct.</p> <p>21 Q. And the second sentence under rationale reads egg</p> <p>22 pricing is expected to increase due to flock size</p> <p>23 reduction and higher input cost. Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. So as a buyer, when you expect egg pricing to go</p>	<p style="text-align: right;">97</p> <p>1 Q. And Mr. Wolf is no longer with the company?</p> <p>2 A. That's correct.</p> <p>3 Q. Do you know when he left?</p> <p>4 A. He left approximately a year ago.</p> <p>5 Q. Okay. Do you know anything about the circumstances</p> <p>6 under which Mr. Wolf left?</p> <p>7 A. He left on his own accord, as far as I'm understanding.</p> <p>8 Q. Okay. Neal Exhibit 8. Now, just in terms of dates,</p> <p>9 the date of Neal Exhibit 7 is October 11th, 2006. Do</p> <p>10 you see that?</p> <p>11 A. I don't, but I'm looking for it.</p> <p>12 MR. CAMPBELL: Down in the right-hand corner.</p> <p>13 THE WITNESS: Thank you. Yes.</p> <p>14 BY MR. GREENE:</p> <p>15 Q. See?</p> <p>16 A. Yes.</p> <p>17 Q. October 11th, 2006.</p> <p>18 A. Yep.</p> <p>19 Q. Okay. And it's also -- as Mr. Campbell points out,</p> <p>20 it's also on the lower right next to the signature,</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. So October 11th, 2006, appears twice. Neal Exhibit 8</p> <p>24 is just a day earlier, October 10th, 2006. It's</p> <p>25 actually two e-mails, correct?</p>

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<p style="text-align: right;">98</p> <p>1 A. That is correct.</p> <p>2 Q. And the bottom e-mail is from David Butler to Filmore</p> <p>3 Walker, copying John Wolf and again Shashi Kothavale.</p> <p>4 Subject NFF-dried eggs 2007. And I should say this</p> <p>5 Neal Exhibit 8 is KEL00011305. Who is Filmore Walker?</p> <p>6 A. I recognize the name, but I don't know what his title</p> <p>7 would have been.</p> <p>8 Q. And he writes, we have completed negotiations with</p> <p>9 Michael Foods for 2007 dried eggs. Here is the summary</p> <p>10 of our contract pricing. Egg white solid, \$315/CWT for</p> <p>11 2007 (price matches our budget). What does -- just get</p> <p>12 the nomenclature. What does the \$315/CWT mean?</p> <p>13 A. So CWT stands for hundred weight. C is the Roman</p> <p>14 Numeral for hundred, so hundred weight. So the 315, if</p> <p>15 you were to take that as hundred weight, it would be</p> <p>16 \$3.15 per pound.</p> <p>17 Q. Do you read that as a flat pricing contract for one</p> <p>18 year?</p> <p>19 A. It doesn't signify anything other so, I mean --</p> <p>20 Q. Well, let's take a look at -- well, let's keep going</p> <p>21 with the document. We'll come back. It says, dried</p> <p>22 whole eggs \$165/CWT for 2007 (price is \$5/CWT</p> <p>23 deflationary). Do you see that?</p> <p>24 A. I do.</p> <p>25 Q. And, again, that would be \$1.65 a pound?</p>	<p style="text-align: right;">100</p> <p>1 increase to the \$195 per hundred weight by Q3. So he's</p> <p>2 saying that the above bullet points at the \$315 per</p> <p>3 hundred weight, he figures it's a good price for the</p> <p>4 egg white solids. And the \$1.65 per pound or \$165 per</p> <p>5 hundred weight for dried whole eggs is good, knowing</p> <p>6 what he's anticipating the cost of eggs to be</p> <p>7 throughout 2007.</p> <p>8 Q. Well, I want to understand the contract pricing. He's</p> <p>9 anticipating that the egg white solids are going to</p> <p>10 rise to as high as \$375 hundred weight by the 4th</p> <p>11 quarter, correct?</p> <p>12 A. That's correct.</p> <p>13 Q. And under the contract he's negotiated, what will</p> <p>14 Kellogg's be paying for egg white solids in the 4th</p> <p>15 quarter of 2007?</p> <p>16 A. 315.</p> <p>17 Q. So you do read this summary as summarizing a flat price</p> <p>18 contract for 2007, correct?</p> <p>19 A. I do.</p> <p>20 Q. Okay. It's flat price for egg white solids, correct?</p> <p>21 A. Egg white solids.</p> <p>22 Q. And it's flat price for dried whole eggs?</p> <p>23 A. That is correct.</p> <p>24 Q. And if you go back to Exhibit 7, it's the 8.5 --</p> <p>25 \$8,550,000 contract is a flat priced contract for a</p>
<p style="text-align: right;">99</p> <p>1 A. That is correct.</p> <p>2 Q. And then Mr. Butler writes, I'm projecting egg white</p> <p>3 solids to start this year around \$300 CWT. And I'm</p> <p>4 sorry. You told me -- how do I say CWT?</p> <p>5 A. Hundred weight.</p> <p>6 Q. Just hundred weight?</p> <p>7 A. Hundred weight.</p> <p>8 Q. Okay. I am projecting egg white solids to start the</p> <p>9 year around \$300 hundred weight and rise to as high as</p> <p>10 \$370 hundred weight by Q407. I believe this is a solid</p> <p>11 deal. We can get a better Q107 offer on dried whole</p> <p>12 eggs but prices are expected to increase to \$175 to</p> <p>13 \$195 hundred weight in Q307. I think this pricing will</p> <p>14 offer Kellogg's stability during a time that energy and</p> <p>15 grains are anticipated to remain volatile. Do you see</p> <p>16 that?</p> <p>17 A. I do.</p> <p>18 Q. How do you read that -- how do you interpret the</p> <p>19 paragraph I just read?</p> <p>20 A. So the way I would interpret that would be the egg</p> <p>21 white solids, he's anticipating the year to start out</p> <p>22 at \$3 per pound or \$300 per hundred weight, and by Q4</p> <p>23 it's going to be at \$370 per hundred weight. As well</p> <p>24 for the dried whole eggs, they're expected to be at</p> <p>25 \$1.75 per pound or \$175 per hundred weight and then</p>	<p style="text-align: right;">101</p> <p>1 year, correct?</p> <p>2 A. That's the way it looks, yes.</p> <p>3 Q. Okay. Now, a moment ago I asked you the question as</p> <p>4 the company's 30(b)(6) witness what portion of</p> <p>5 Kellogg's contracting from the period 1999 to 2008 was</p> <p>6 done on flat price contracting, and the only example</p> <p>7 that you were aware of was the 2003 - 2004 example --</p> <p>8 A. That's right.</p> <p>9 Q. -- I had put in front of you, correct?</p> <p>10 A. That's correct.</p> <p>11 Q. You weren't aware of this?</p> <p>12 A. No.</p> <p>13 Q. Before you came here today, you weren't aware of this</p> <p>14 flat pricing, correct?</p> <p>15 A. No.</p> <p>16 Q. Okay. So is it fair to say you don't really know how</p> <p>17 much flat price contracting was done by Kellogg's</p> <p>18 between 1999 and 2008?</p> <p>19 A. From what I discussed with Kelly Tobey, as we had said,</p> <p>20 it was my understanding that we had always gone off of</p> <p>21 the Urner Barry market.</p> <p>22 Q. But now you know that's not correct, right?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. So your understanding coming into the deposition</p> <p>25 was incorrect?</p>

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<p style="text-align: right;">102</p> <p>1 A. That's correct.</p> <p>2 Q. You agree with me?</p> <p>3 A. Yes.</p> <p>4 Q. And as the 30(b)(6) witness, you really can't tell us</p> <p>5 how frequent or prevalent flat price contracting was at</p> <p>6 Kellogg's between 1998 and 2008, correct?</p> <p>7 A. No.</p> <p>8 MR. CAMPBELL: Objection as to form.</p> <p>9 BY MR. GREENE:</p> <p>10 Q. Was the answer to that no?</p> <p>11 A. The answer is no. My assumption would still be that we</p> <p>12 still used the Urner Barry other than the two years</p> <p>13 that we've gone through.</p> <p>14 Q. Why would you make that assumption?</p> <p>15 A. I don't know. It's just because that's what I was told</p> <p>16 previous.</p> <p>17 Q. Okay. But as I understand it, you weren't told about</p> <p>18 either of these two episodes, correct?</p> <p>19 A. That's correct.</p> <p>20 Q. You weren't told --</p> <p>21 A. Yeah.</p> <p>22 Q. You weren't told about the 2003-2004 flat pricing,</p> <p>23 correct?</p> <p>24 A. Correct.</p> <p>25 Q. So when you came here today, you didn't know about</p>	<p style="text-align: right;">104</p> <p>1 Q. And, again, you can always read as much of these</p> <p>2 documents as you want. But in the middle Mr. Butler</p> <p>3 writes to Christine with underlining, the dried egg</p> <p>4 contract I negotiated for 2007 is extremely favorable</p> <p>5 compared to current market. Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. First bullet, whole dried eggs were contracted at \$1.65</p> <p>8 a pound and are \$1.8 million favorable to market. Did</p> <p>9 I read that right?</p> <p>10 A. Yep.</p> <p>11 Q. And it says, dried egg whites (Albumen) were contracted</p> <p>12 at \$3.15 a pound and are 2.34 million favorable to</p> <p>13 market. Do you see that?</p> <p>14 A. I do.</p> <p>15 Q. How do you interpret Mr. Butler's e-mail?</p> <p>16 A. I interpret that the fixed pricing that he had locked</p> <p>17 in October of 2006, the beginning of January, those</p> <p>18 markets had increased, and they are favorable by those</p> <p>19 dollar amounts.</p> <p>20 Q. So the market prices of egg products are going up,</p> <p>21 correct?</p> <p>22 A. That is correct.</p> <p>23 Q. And anybody who was forced to buy on the daily market</p> <p>24 price of eggs, they would be forced to pay more as time</p> <p>25 goes on, correct?</p>
<p style="text-align: right;">103</p> <p>1 that, right?</p> <p>2 A. That's correct.</p> <p>3 Q. And you weren't told about the 2007 flat price</p> <p>4 contracting, right?</p> <p>5 A. That's correct.</p> <p>6 Q. So when you came here today, you didn't know about</p> <p>7 that?</p> <p>8 A. That's correct.</p> <p>9 (Exhibit No. 9 marked)</p> <p>10 BY MR. GREENE:</p> <p>11 Q. I will represent to you Exhibit 9 is bates number</p> <p>12 KEL00000284 to 285. Although, I will tell you I think</p> <p>13 the 285 is a blank page, that's how it was produced.</p> <p>14 In any event, this is an e-mail from Mr. Butler, David</p> <p>15 Butler, to Christine Wentworth, copying John Wolf</p> <p>16 January 22nd, 2007, egg market January 22nd. Is that</p> <p>17 correct?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And we've established before Christine Wentworth</p> <p>20 was Mr. Butler's -- I don't know what the word is.</p> <p>21 A. Manager.</p> <p>22 Q. Supervisor, manager; is that correct?</p> <p>23 A. Yes.</p> <p>24 Q. And Mr. Wolf then was Ms. Wentworth's manager?</p> <p>25 A. That's correct.</p>	<p style="text-align: right;">105</p> <p>1 A. That is correct.</p> <p>2 Q. They'd be paying more in January than they were paying</p> <p>3 in 2006, right?</p> <p>4 A. That is correct.</p> <p>5 Q. But because Kellogg's had this flat price one-year</p> <p>6 contract, it was entitled to its contract price, right?</p> <p>7 A. That is correct.</p> <p>8 Q. And the contract price that had been locked in was</p> <p>9 lower than the market price, right?</p> <p>10 A. That's correct.</p> <p>11 Q. And so Mr. Butler is saying that this is extremely</p> <p>12 favorable to current market, correct?</p> <p>13 A. As of January 22nd, yes.</p> <p>14 Q. And do you know what happened the rest of 2007?</p> <p>15 A. I do not.</p> <p>16 Q. Okay. The -- in the middle of the following</p> <p>17 paragraph -- I'm just going to read a sentence. But,</p> <p>18 again, you can read whatever portion you like start to</p> <p>19 finish.</p> <p>20 It says, also since the principal ingredient</p> <p>21 in chicken feed is corn, the results of the soaring</p> <p>22 corn prices have been disastrous to the egg farmer. Do</p> <p>23 you see that?</p> <p>24 A. No. You're in the middle of that paragraph?</p> <p>25 Q. I'm in the middle of the paragraph that starts after</p>

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<p style="text-align: right;">106</p> <p>1 the Christmas holidays. And, again, take your time.</p> <p>2 A. Okay.</p> <p>3 Q. So I'm focused on the middle sentence that says, also</p> <p>4 since the principal ingredient in chicken feed is corn,</p> <p>5 the results of the soaring corn prices have been</p> <p>6 disastrous to the egg farmer. Do you see that?</p> <p>7 A. I do.</p> <p>8 Q. Okay. And what does that mean to you?</p> <p>9 A. Corn would be one of the feeds that they feed to</p> <p>10 chickens to -- and they -- of course chickens need</p> <p>11 nourishment to produce eggs. So this would be from the</p> <p>12 egg farmer an increase in his inputs for his feed</p> <p>13 costs.</p> <p>14 Q. So not only -- not only are the market prices of eggs</p> <p>15 and egg products going up, but the cost of production</p> <p>16 is going up, correct?</p> <p>17 A. That's correct.</p> <p>18 Q. But even though the cost of production is going up for</p> <p>19 the egg producer, Kellogg's is still entitled to the</p> <p>20 flat prices that it contracted for at the end of 2006,</p> <p>21 correct?</p> <p>22 A. That's correct.</p> <p>23 Q. So Kellogg's didn't bear any of the risk in 2007</p> <p>24 associated with rising costs of production, correct?</p> <p>25 MR. CAMPBELL: Objection as to form.</p>	<p style="text-align: right;">108</p> <p>1 VIDEOGRAPHER: We're back on the record at</p> <p>2 12:30 p.m.</p> <p>3 BY MR. GREENE:</p> <p>4 Q. Well, good afternoon, Mr. Neal, since it's 12:30. You</p> <p>5 understand you're still under oath?</p> <p>6 A. I do.</p> <p>7 Q. Okay. I want to direct your attention in the notice of</p> <p>8 deposition, Neal Exhibit 1, to topics 3 and 4, which</p> <p>9 would appear on page 5. I'm using up my time eating.</p> <p>10 You see that there's 3 and 4. 3 deals with quality</p> <p>11 standards. Do you see that?</p> <p>12 A. I do.</p> <p>13 Q. And No. 4 more generally with factors that Kellogg</p> <p>14 considers when it purchases, solicits bids for or</p> <p>15 otherwise acquires egg, specialty eggs or egg products?</p> <p>16 A. I do.</p> <p>17 Q. When you became an egg buyer in 2009, did you receive</p> <p>18 any training related to issues of quality relating to</p> <p>19 egg products?</p> <p>20 A. No.</p> <p>21 Q. Did you have any understanding as to whether there were</p> <p>22 any particular quality standards or specifications that</p> <p>23 the egg products you purchased had to meet?</p> <p>24 A. Nothing more than the specifications that were</p> <p>25 available at that time.</p>
<p style="text-align: right;">107</p> <p>1 BY MR. GREENE:</p> <p>2 Q. Withdrawn. Under the terms of the contract between</p> <p>3 Kellogg's and Michael Foods in 2007, who bore the risk</p> <p>4 of rising egg market prices?</p> <p>5 A. If you look at what's stated on the document Neal 8, I</p> <p>6 would have to say Kellogg's beared the risk with the</p> <p>7 market being at \$300 per hundred weight and our lock-in</p> <p>8 price is at 315. But until it reached that 315 then,</p> <p>9 the supplier would have beared that risk at anything</p> <p>10 over 315.</p> <p>11 Q. So the portion of the risk above a potential price of</p> <p>12 \$315, the supplier would bear the risk?</p> <p>13 A. That's correct.</p> <p>14 Q. Okay. And the same would be true of the dried egg</p> <p>15 whites, that for the prospect of any price above -- I</p> <p>16 guess we just did dried egg whites.</p> <p>17 A. Yes, we did.</p> <p>18 Q. For whole dried eggs, the prospect -- for the prospect</p> <p>19 of any price above \$1.65 a pound, it would be the</p> <p>20 supplier that would bear that risk, correct?</p> <p>21 A. That is correct.</p> <p>22 MR. GREENE: Let's go off the record.</p> <p>23 VIDEOGRAPHER: Going off the record at</p> <p>24 12:20 p.m.</p> <p>25 (Recess taken)</p>	<p style="text-align: right;">109</p> <p>1 Q. I assume that it's -- withdrawn. Does Kellogg's</p> <p>2 consider the quality of the food products it sells to</p> <p>3 be important?</p> <p>4 A. Yes.</p> <p>5 Q. And would it also be fair to say that Kellogg's</p> <p>6 considers the quality of the ingredients it uses to</p> <p>7 make those food products to be important?</p> <p>8 A. Absolutely.</p> <p>9 MR. GREENE: Please mark as Neal Exhibit 10.</p> <p>10 (Exhibit No. 10 marked)</p> <p>11 BY MR. GREENE:</p> <p>12 Q. Neal Exhibit 10 is bates number KEL00017901 to 17902.</p> <p>13 It's an e-mail chain. I think it includes a series of</p> <p>14 forwards. I'll be honest, I'm not entirely familiar</p> <p>15 with this presentation of e-mail. Is this presentation</p> <p>16 of forwards familiar to you? Have you seen documents</p> <p>17 that look like this before at Kellogg's?</p> <p>18 A. Maybe out of an older system. It's not --</p> <p>19 Q. All right. There appears to be, if you go to the very</p> <p>20 end, an e-mail from Kelly Tobey to Trudy Cravens</p> <p>21 January 6th, 2003, at 11:30 a.m., correct, the last</p> <p>22 e-mail -- the last --</p> <p>23 A. Yes.</p> <p>24 Q. The end of the two-page document.</p> <p>25 A. Yes.</p>

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<p style="text-align: right;">110</p> <p>1 Q. And then there is something I -- to Kurt Plouse,</p> <p>2 Worthington. I'm trying to figure out the one above</p> <p>3 it. Is that from Trudy Cravens?</p> <p>4 A. To Kurt. That's the way I see it. It's to Kurt from</p> <p>5 Trudy.</p> <p>6 Q. We're not seeing the conventional sort of e-mail</p> <p>7 format. But the one above it on 17902 is 11:59 a.m.,</p> <p>8 and it appears to be from Kurt Plouse to Trudy Cravens,</p> <p>9 correct?</p> <p>10 A. That's the way I read it.</p> <p>11 Q. And then when you go to the first page, now we're from</p> <p>12 Kurt Plouse to Trudy Cravens at 1:28 p.m. And then the</p> <p>13 very top one is January 6th, 12:36 p.m. I don't know</p> <p>14 if time zones are playing a role. I don't want to</p> <p>15 misconstrue the sequence here. Can you look at this</p> <p>16 and see if you can figure out what the sequence of</p> <p>17 e-mails is?</p> <p>18 A. I would agree with that sequence.</p> <p>19 Q. Okay.</p> <p>20 A. As far as the timing, I'm not certain who Trudy Cravens</p> <p>21 and Kurt Plouse are or where they would reside to know</p> <p>22 if there's a time zone issue there.</p> <p>23 Q. Okay. That was going to be my question. You don't</p> <p>24 know who Trudy Cravens is?</p> <p>25 A. Just by what it says between the e-mails there</p>	<p style="text-align: right;">112</p> <p>1 A. Yes.</p> <p>2 Q. Also if gel strength is a requirement for Certificate</p> <p>3 of Analysis, what is the preferred method of testing</p> <p>4 for gel strength, or is a specific lab used for that</p> <p>5 testing. Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. It appears then Trudy Cravens who is the recipient of</p> <p>8 that e-mail asked Kurt if he has a response. Is that</p> <p>9 correct?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And Kurt provides a response, and it would be</p> <p>12 fair to say it's a technical response, correct?</p> <p>13 A. Yes.</p> <p>14 Q. I mean --</p> <p>15 A. That's the way it appears. Yes.</p> <p>16 Q. I mean, it starts yes, less than 300 is the</p> <p>17 specification, as it is a test that measures the drop</p> <p>18 of a penetrometer cone into an egg gel. The less the</p> <p>19 penetration, the stronger the gel. Do you know what</p> <p>20 that means?</p> <p>21 A. I do not.</p> <p>22 Q. Okay. You recognize the whole discussion of egg gel?</p> <p>23 A. Somewhat, yes.</p> <p>24 Q. Explain what you recognize from this discussion.</p> <p>25 A. The understanding of egg gel to me, and the way I</p>
<p style="text-align: right;">111</p> <p>1 forwarded by Trudy Cravens, Worthington, U.S.A., it</p> <p>2 tells me that she was probably at our Worthington plant</p> <p>3 during this time period.</p> <p>4 Q. Remind me. What state is that?</p> <p>5 A. Is it Ohio, I think?</p> <p>6 Q. And they're the ones that make the MorningStar Farms</p> <p>7 products?</p> <p>8 A. They were. I believe we closed the Worthington plant.</p> <p>9 So now it's Clearfield and Zanesville.</p> <p>10 Q. Back in 2003, Worthington would have been making the</p> <p>11 MorningStar Farms products?</p> <p>12 A. Correct.</p> <p>13 Q. Do you know who Kurt Plouse is?</p> <p>14 A. No, I do not.</p> <p>15 Q. Okay. Well, let's go through this. We've identified</p> <p>16 Kelly Tobey. She was the egg buyer, correct?</p> <p>17 A. That's correct.</p> <p>18 Q. And in the first e-mail, Kelly Tobey is asking Trudy</p> <p>19 Cravens a request on specification. I think there's a</p> <p>20 misspelling there. And then there's a number,</p> <p>21 109110-000. And if you look below the thanks. Kelly,</p> <p>22 it says, my questions regarding specification #109110</p> <p>23 pertains to the gel strength listed in chemical</p> <p>24 properties as to if less than 300 is a correct</p> <p>25 statement. Did I read that right?</p>	<p style="text-align: right;">113</p> <p>1 understand it, is that it's a strength. Because</p> <p>2 Worthington, they make those -- the meat replacement</p> <p>3 products that typically need a lot of binding. And so</p> <p>4 with that gel strength, it aids in binding our product</p> <p>5 together. That's what I --</p> <p>6 Q. Give me an example of the kind of product you're</p> <p>7 talking about.</p> <p>8 A. Like a -- I want to say hamburger but it's not</p> <p>9 hamburger. It's made of either -- it could be</p> <p>10 mushrooms. It could be soy. It could be --</p> <p>11 Q. Something like a soy burger?</p> <p>12 A. Absolutely, yep.</p> <p>13 Q. Okay. And there would be --</p> <p>14 A. Egg.</p> <p>15 Q. What kind of egg product would be in there?</p> <p>16 A. Egg whites.</p> <p>17 Q. Egg white solids?</p> <p>18 A. Egg white, dried egg white powder.</p> <p>19 Q. And when they use the term egg white solid, is that</p> <p>20 also referenced to dried egg whites?</p> <p>21 A. Yes.</p> <p>22 Q. So you use dried egg whites in these MorningStar</p> <p>23 products. The binding would be an important feature of</p> <p>24 them?</p> <p>25 A. That's correct.</p>

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<p style="text-align: right;">114</p> <p>1 Q. And so Mr. Plouse who you don't -- you're not familiar 2 with?</p> <p>3 A. No.</p> <p>4 Q. Is discussing the test that they use to figure out 5 whether -- you know, whether it's -- the gel is strong 6 enough, correct?</p> <p>7 A. That's correct.</p> <p>8 Q. Then he writes, this is an in-house method developed in 9 Worthington many years ago and cannot be related to 10 other gel strength methods by other labs. So do you 11 read that as this is a unique Worthington test?</p> <p>12 A. Yes.</p> <p>13 Q. So this is -- if I'm an egg products supplier, I won't 14 necessarily know if my egg products satisfy this 15 standard just by testing it against other commercial 16 standards, correct?</p> <p>17 A. That's correct.</p> <p>18 Q. Yeah. He's saying -- okay. And he writes, a word of 19 caution, if we are, quote, bidding out, unquote, our 20 egg business, it should be remembered that there have 21 been occasions in the past when egg white solid passed 22 laboratory testing but did not pass functionality 23 testing on the bench or in the plant. How do you read 24 that sentence?</p> <p>25 A. As he stated with his previous paragraph there, that it</p>	<p style="text-align: right;">116</p> <p>1 test in production or at the plant to see if there are 2 any different results.</p> <p>3 Q. The next sentence reads, most notable is the incident 4 with Sonstegard egg white solids in August 2001. What 5 was the incident with Sonstegard egg white solids in 6 August of 2001?</p> <p>7 A. I didn't know -- I don't know anything about that.</p> <p>8 Q. No familiarity with that?</p> <p>9 A. No familiarity.</p> <p>10 Q. So then we come back -- I'm sorry. We'll go one more 11 paragraph in the Kurt e-mail. All necessary paperwork 12 and a sample of the material we intend to buy should be 13 submitted to T. Cravens for approval prior to a 14 contractual agreement. Do you see that?</p> <p>15 A. I do.</p> <p>16 Q. If the material does not get checked out and approved 17 by R&T, there's a potential for another Sonstegard 18 incident. What is R&T?</p> <p>19 A. Research and technology would be my thought.</p> <p>20 Q. Did you have occasion when you were an egg buyer to 21 work with research and technology?</p> <p>22 A. Absolutely.</p> <p>23 Q. What were your interactions with research and 24 technology?</p> <p>25 A. If we were looking to either a bid or getting a new</p>
<p style="text-align: right;">115</p> <p>1 was -- it's something that's developed -- this testing 2 method, anyway, was developed at Worthington. So any 3 other egg product that has been tested in other 4 laboratories that may have passed in those laboratories 5 didn't pass in -- didn't pass the Worthington test, per 6 se.</p> <p>7 Q. Egg products that may be acceptable elsewhere may not 8 be acceptable to Kellogg's, correct?</p> <p>9 A. To the Worthington plant.</p> <p>10 Q. To the Worthington plant. And that's one of the plants 11 that Kellogg's buys egg products for, correct?</p> <p>12 A. That's correct.</p> <p>13 Q. The sentence -- there's a sentence that reads, there's 14 been occasions in the past when egg white solids passed 15 laboratory testing but did not pass functionality 16 testing on the bench or in the plant. What does 17 functionality testing on the bench mean?</p> <p>18 A. So it would be just a benchtop sample. It would be 19 something that would be made at like a pilot plant, not 20 full production.</p> <p>21 Q. And what does functionality testing in the plant mean?</p> <p>22 A. It would be the same -- you're going to be doing the 23 same test with that -- we'll use eggs as our example. 24 They're going to do a test on a benchtop or in the 25 pilot plant, and then they'll also replicate that same</p>	<p style="text-align: right;">117</p> <p>1 supplier approved or even a current supplier approved, 2 if our food developers were looking for something that 3 had more gel power or gel strength or -- anything that 4 they were looking for specifically within an egg 5 product, then I would talk to them to see, okay, what 6 specifically are you looking for. And then go to our 7 supplier, rightful supplier, and say this is kind of 8 what they're looking for, do you have anything off 9 shelf that would be similar to this.</p> <p>10 Q. And what role did research and technology play when you 11 were an egg buyer in selecting or qualifying suppliers 12 to supply egg products?</p> <p>13 A. Yeah. So if I was to look at -- for instance, if I was 14 to look at a replacement of a current supplier that 15 has -- like something that Michael Foods provides us is 16 that free flow whole egg. To replace that with another 17 supplier, another egg supplier, I would have to talk to 18 someone at R&D or R&T, as it's stated here on the 19 document, to have them go through the testing, as it 20 says here, the benchtop or the production samples, to 21 see if that product -- this particular new vendor is 22 providing us matches or is better than or worse than 23 what we were currently being provided.</p> <p>24 Q. So sometimes when you're looking at a new supplier, you 25 find that their products that they're offering are just</p>

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<p style="text-align: right;">118</p> <p>1 as good as your current supplier?</p> <p>2 A. Yes.</p> <p>3 Q. And sometimes you find that they're not as good?</p> <p>4 A. Yes.</p> <p>5 Q. And when the products aren't as good, then Kellogg's</p> <p>6 won't buy them even though they may be cheaper,</p> <p>7 correct?</p> <p>8 A. That's correct.</p> <p>9 Q. Okay. And there have been occasions when you were egg</p> <p>10 buyer where you made a decision about a supplier based</p> <p>11 on quality considerations, correct?</p> <p>12 A. Absolutely.</p> <p>13 Q. It's not always just about price?</p> <p>14 A. No.</p> <p>15 Q. The e-mail at the top of the first page of Neal</p> <p>16 Exhibit 10, now, this is from Trudy. And, again, I</p> <p>17 think you're not -- you think Trudy is with the</p> <p>18 Worthington plant, but you don't know -- you're not</p> <p>19 familiar with her.</p> <p>20 A. Yeah. Just from what it says between the e-mails</p> <p>21 that --</p> <p>22 Q. Yeah.</p> <p>23 A. It states her name there or her location.</p> <p>24 Q. It says, Kelly, I asked the lab manager to respond to</p> <p>25 the question you asked regarding the egg white solids.</p>	<p style="text-align: right;">120</p> <p>1 Q. There are going to be times when there are quality</p> <p>2 issues that require Kellogg's to buy from one supplier</p> <p>3 and not from another?</p> <p>4 A. I would say that there would be -- I don't want to say</p> <p>5 product issues. I would say different properties. You</p> <p>6 know, just because of the equipment capabilities that</p> <p>7 they would have. So the different capabilities</p> <p>8 equipment that they would have produce different</p> <p>9 properties within the product. And if it doesn't meet</p> <p>10 the gel strength, then yes, they wouldn't be able to</p> <p>11 produce that.</p> <p>12 Q. And according to this correspondence, there was an</p> <p>13 episode, in fact, where Sonstegard egg white solid</p> <p>14 could not meet Kellogg's needs and they were replaced,</p> <p>15 correct?</p> <p>16 A. That is correct.</p> <p>17 (Exhibit No. 11 marked)</p> <p>18 BY MR. GREENE:</p> <p>19 Q. While you're reading, I'm going to read the bates</p> <p>20 numbers into the record. Neal Exhibit 11 is</p> <p>21 KEL00017906 to 17907. It is an e-mail stream of</p> <p>22 e-mails that are written, I believe all of them, on</p> <p>23 January 9th, 2003. Okay?</p> <p>24 A. Yep.</p> <p>25 Q. Do you recognize the name Ronald McDermott?</p>
<p style="text-align: right;">119</p> <p>1 Kurt raises an important point regarding testing on the</p> <p>2 bench and in production before we accept a bid on egg</p> <p>3 whites.</p> <p>4 The last sentence in that first paragraph</p> <p>5 reads for many of our products, the functionality of</p> <p>6 the egg whites is critical to the texture of the</p> <p>7 product. What does that last sentence mean?</p> <p>8 A. So the functionality, which would be the gel power or</p> <p>9 the gel strength that he's discussing, Kurt. He wants</p> <p>10 to make sure that that gel strength is there because if</p> <p>11 you don't have that gel strength, one of two things are</p> <p>12 going to happen. And I'm going to assume here that</p> <p>13 it's either that the product will fall apart because it</p> <p>14 doesn't have the binding strength and then also your</p> <p>15 texture of that product. Knowing that it's a meat</p> <p>16 analog or a meat substitute, they want that texture to</p> <p>17 be very similar to what they're producing today.</p> <p>18 Q. And the egg white solids that are produced by different</p> <p>19 egg products manufacturers may perform differently,</p> <p>20 correct?</p> <p>21 A. Absolutely.</p> <p>22 Q. They're not -- from Kellogg's perspective, the egg</p> <p>23 products from one supplier are not interchangeable with</p> <p>24 the egg products from another supplier?</p> <p>25 A. Not 100 percent interchangeable I would say.</p>	<p style="text-align: right;">121</p> <p>1 A. I do.</p> <p>2 Q. Who is Ron McDermott?</p> <p>3 A. He's the vice president of AIT which is advanced</p> <p>4 innovation technology. He is now. That is his</p> <p>5 position now. I don't know what it was then.</p> <p>6 Q. And what is -- do you know what his position at AIT is?</p> <p>7 A. He is the head, is my understanding, of AIT. So he</p> <p>8 manages the other people that are within that group.</p> <p>9 Q. Okay. And what does that group do?</p> <p>10 A. They're looking for things that are say five to ten</p> <p>11 years out for any innovation item, things coming down</p> <p>12 the line. I don't know what to tell you other than</p> <p>13 it's -- they're like the forward thinkers of where is</p> <p>14 the market going to be in five to ten years, looking</p> <p>15 for suppliers that can help us out in getting there.</p> <p>16 Q. Do you know, is his background scientific?</p> <p>17 A. I'm going to assume that it was.</p> <p>18 Q. Do you know what he was doing, what his position was in</p> <p>19 January of 2003?</p> <p>20 A. I don't.</p> <p>21 Q. Do you know if he had some kind of a scientific or</p> <p>22 technical position?</p> <p>23 A. I would think that he was either a food developer or,</p> <p>24 you know, something creating the food.</p> <p>25 Q. Just for purposes of comparison, Exhibit 11, the date</p>

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<p style="text-align: right;">122</p> <p>1 January 9th is just a few days after the dates that are 2 referenced in Exhibit 6. And do you know in terms of 3 the hierarchy where Ron McDermott would be relative to 4 the people he's writing to here, Kelly Tobey, Trudy 5 Cravens, Kurt Plouse, Jeffrey Bowman, Dan Hartkemeyer, 6 Paul Schwab, and Shashi Kothavale?</p> <p>7 A. From a hierarchy standpoint, I can tell you that like 8 Kelly Tobey and Shashi, just from previous what you've 9 shown me, are part of procurement. As we saw before in 10 Exhibit 10, that Kurt Plouse and Trudy Cravens are part 11 of the Worthington teams of the plant is my -- and then 12 everyone else no, I don't even recognize.</p> <p>13 Q. And in the e-mail at the bottom, the January 9th, 2003, 14 e-mail from Ron McDermott to Kelly Tobey with a bunch 15 of CCs, he talks about the Sonstegard incident again, 16 correct?</p> <p>17 A. Yes.</p> <p>18 Q. He says, as you -- I'm reading from the middle, but of 19 course you can read any portion you want. As you 20 probably know from Shashi or others, we had a major 21 problem here with Sonstegard EWS. Would you read that 22 as egg white solids?</p> <p>23 A. I would.</p> <p>24 Q. And somehow a contract was written without formal 25 approval. In the end, Shashi and Pat Mitchell told</p>	<p style="text-align: right;">124</p> <p>1 McDermott writes, I guess the main point for us is that 2 with highly functional ingredient such as EWS or other 3 proteins, we need to be cautious. How do you read that 4 sentence and particularly the phrase highly functional 5 ingredients?</p> <p>6 A. That any ingredient that has -- that actually does 7 something within our product, if it is binding or if 8 it's for browning, if there's -- if there's an actual 9 reason for that product, then we need to take a higher 10 look at that or a closer look at if we were to change 11 products.</p> <p>12 Q. When you say "closer look," what do you mean?</p> <p>13 A. As far as testing. I think in the previous paragraph 14 it shows that Sonstegard still feels that they could 15 match what Michael Foods -- they just need more time. 16 But as Ron McDermott states, it's highly functional and 17 we probably should take longer -- or a closer look at 18 if we were going to change suppliers for highly 19 functional ingredients.</p> <p>20 Q. And the reason that you would take -- be cautious is 21 because Kellogg's recognized there's a risk that 22 products provided by -- egg products provided by some 23 suppliers might not meet all Kellogg's needs, correct?</p> <p>24 A. Not the first go-around. Yes, I would agree.</p> <p>25 MR. GREENE: Why don't we go off the record.</p>
<p style="text-align: right;">123</p> <p>1 Sonstegard we were going back to MG Waldbaum/Wakefield, 2 and the sentence goes on. Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. After the Sonstegard incident where their product 5 failed to meet the gel requirements, was the Sonstegard 6 egg white solids then replaced by a product made by 7 Michael Foods?</p> <p>8 A. I'm not -- I'm not certain who the MG Waldbaum -- I 9 know that Michael Foods is out of Wakefield, but I'm 10 not certain what the MG Waldbaum is. If that is 11 Michael Foods, then yes.</p> <p>12 Q. And so Kellogg's made the determination that the MG 13 Waldbaum version of the egg white solids performed 14 better for the required purposes than the Sonstegard 15 product, correct?</p> <p>16 A. As an incumbent, yes. As Michael Foods being the 17 incumbent, they were going back to them.</p> <p>18 Q. They were going back because of problems with the 19 Sonstegard product, correct?</p> <p>20 A. That is correct.</p> <p>21 Q. The Sonstegard product had problems with gel strength 22 that the MG Waldbaum product did not have, correct?</p> <p>23 A. That is correct.</p> <p>24 Q. Okay. And then at the end of the e-mail or the last 25 paragraph of the e-mail, Ron McDermott, Ronald</p>	<p style="text-align: right;">125</p> <p>1 VIDEOGRAPHER: Going off the record at 2 1:00 p.m. 3 (Recess taken) 4 VIDEOGRAPHER: We're back on the record at 5 1:52 p.m. 6 BY MR. GREENE: 7 Q. Good afternoon, Mr. Neal. 8 A. Good afternoon. 9 Q. During the break, did you discuss the substance of your 10 testimony with anyone? 11 A. No. 12 Q. Okay. And you understand you're still under oath? 13 A. I do. 14 Q. Okay. 15 MR. GREENE: Let's mark -- what number are we 16 up to, 12? 17 (Exhibit No. 12 marked) 18 BY MR. GREENE: 19 Q. I'll show you what's marked as Neal Exhibit 12. This 20 is bates number KEL00005071 to 5138. That's a lot of 21 pages in that range. The cover page says agenda. 22 Mr. Neal, first of all, do you recognize this type of 23 document? 24 A. Yes. 25 Q. What is this document?</p>

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<p style="text-align: right;">126</p> <p>1 A. Under the first heading there, underneath the agenda 2 where that bullet point says C-O-G-S procurement 3 overview, it would be the cost of goods sold, 4 procurement overview. So it's looking at the 2001, 5 2002 projections of my guess -- I haven't looked 6 through it. But my guess is of all the commodities and 7 categories that are purchased by Kellogg. 8 Q. When you use the term "commodities," what do you mean? 9 A. Any of the commodities like corn, rice, wheat, any 10 grain-based items that we would buy. 11 Q. Do you -- when you use the term commodities -- 12 withdrawn. 13 Do you consider the egg products you purchase 14 to be commodities? 15 A. I wouldn't say that it's categorized that way. No. 16 Q. The definition you use of commodities would not include 17 egg products? 18 A. No. 19 Q. This is one of those documents where if I -- you can -- 20 I say you can read the whole thing. If you read the 21 whole thing, we'd be here a long time. So, again, 22 you're always free to look at whatever you'd like. 23 I wanted to ask a question about the page 24 that reads KEL00005078. You see that this is a 25 document that reads raw materials opportunities at the</p>	<p style="text-align: right;">128</p> <p>1 that? 2 A. It was Michael Foods. 3 Q. Are they your largest egg product supplier? 4 A. Yes. 5 Q. And when you are negotiating with Michael Foods, do 6 you, in fact, leverage size and expertise? 7 A. Yes. 8 Q. And based on your explanation previously, your 9 expectation as a large buyer is that you're going to be 10 able to get a better price because of the volume of 11 purchases you're making, correct? 12 A. That is correct. 13 Q. And has that been your experience with egg products? 14 A. With renegotiating, I can't say yes. I have to say no. 15 Q. You haven't had that -- you haven't had that 16 experience? 17 A. I haven't had that opportunity. Right. 18 Q. Did you -- in preparing for the deposition today, did 19 you talk to anybody at Kellogg's about leveraging size 20 and expertise in contracts over the period from 1999 to 21 2008? 22 A. No. 23 MR. CAMPBELL: You really brought all this 24 paper to ask those three questions? 25 MR. GREENE: If I had only brought part of</p>
<p style="text-align: right;">127</p> <p>1 top. 2 A. Yes. 3 Q. And the first bullet reads contract negotiation - 4 leverage side - leverage expertise. What does that 5 mean? 6 A. I would say within buying raw materials, the way things 7 are typically -- the way we would look at that is if 8 you're buying a lower volume item, the price will be X. 9 The more volume that you typically have, the price 10 tends to be lower because of you're leveraging your 11 size or your volume because that would give the 12 supplier efficiencies for running more product. 13 Q. And when you were a buyer of egg products in the 2009 14 -- what's the back end of that? 2013? 15 A. 2013, yep. 16 Q. 2009 to 2013 period, did you -- withdrawn. 17 When you were an egg buyer, were you 18 instructed about leveraging size and expertise in 19 entering into contracts with egg buyers? 20 A. When I came into the egg buying, it was in the middle 21 of a contract, the grain-based contract that Chris 22 Chandler had started. When that contract was 23 completed, we actually just renegotiated with our 24 incumbents. 25 Q. When you say renegotiated with the incumbents, who was</p>	<p style="text-align: right;">129</p> <p>1 it, you would have objected to failing to produce the 2 entire document, such as the -- our business. 3 MS. ANSARI: Right. 4 BY MR. GREENE: 5 Q. Do you have an understanding of the allegations that 6 Kellogg's is making in the lawsuit? 7 MR. CAMPBELL: I object on the grounds of 8 privilege to that question to the extent his answer 9 relies on communications with Counsel. If he has an 10 understanding based other than on communications with 11 Counsel, he of course can answer. 12 BY MR. GREENE: 13 Q. With your counsel's objection noted, do you have an 14 understanding of the allegations Kellogg's is making in 15 this lawsuit? 16 A. No. 17 Q. Are animal welfare issues important to Kellogg's? 18 A. Yes. They have as of recently when I've managed -- 19 Q. When you've -- 20 A. When I've managed eggs. 21 Q. That goes back to 2009? 22 A. That's correct. 23 Q. During the period prior to 2009, were animal welfare 24 issues important to Kellogg's? 25 A. From me researching what I know about the egg products</p>

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<p style="text-align: right;">130</p> <p>1 and animal welfare, it was -- there was an e-mail that 2 stated -- from 2006 that stated that we had had some -- 3 I think it was consumers that had questioned it back in 4 2005.</p> <p>5 Q. Well, apart from reacting to the particular consumer 6 correspondence or whatever it was, as a matter of 7 company policy, did the company have any policies 8 towards animal welfare prior to 2009?</p> <p>9 A. No.</p> <p>10 Q. None at all?</p> <p>11 A. No.</p> <p>12 Q. Okay. Did the company prior to 2009 have any animal 13 welfare standards relating to egg-laying hens?</p> <p>14 A. 2009? No.</p> <p>15 Q. Did it have any animal welfare requirements that 16 affected the selection of egg products suppliers?</p> <p>17 A. No.</p> <p>18 Q. During that period prior to 2009, did Kellogg's 19 purchase cage-free or free-range eggs?</p> <p>20 A. Prior to 2009? No.</p> <p>21 Q. Okay. Has that changed?</p> <p>22 A. That has changed.</p> <p>23 Q. When did that change?</p> <p>24 A. That changed in 2000 -- 2012.</p> <p>25 Q. And in 2012, did the company begin to purchase</p>	<p style="text-align: right;">132</p> <p>1 A. That's fair.</p> <p>2 Q. When was that?</p> <p>3 A. The e-mail that I saw was 2006. But they had stated 4 that it was the year prior.</p> <p>5 Q. They -- the e-mail indicated that the correspondence 6 from the consumers had come in a year earlier?</p> <p>7 A. That's correct.</p> <p>8 Q. All right. Before that, whatever that was, 2005 or 9 2006, are you aware of any discussions within Kellogg 10 about animal welfare issues relating to egg production?</p> <p>11 A. The only other thing that I had seen from a file was a 12 document about UEP and UEP certification that was dated 13 in 2002.</p> <p>14 Q. You became aware of the -- Kellogg's became aware of 15 the UEP Certified Program?</p> <p>16 A. That's when I -- that's the earliest document that I 17 could find.</p> <p>18 Q. The document you're referring to, is that -- it's sort 19 of in the nature of hearing about the program?</p> <p>20 A. It was --</p> <p>21 Q. Go ahead.</p> <p>22 A. I believe the document was essentially what -- in 2002 23 what the UEP certification program publically stated it 24 was going to be.</p> <p>25 Q. What about discussions within Kellogg's about whether</p>
<p style="text-align: right;">131</p> <p>1 cage-free eggs?</p> <p>2 A. That is correct.</p> <p>3 Q. For what products?</p> <p>4 A. Undisclosed. It was -- it was mixed in with everything 5 else. We didn't segment it to any particular brand.</p> <p>6 Q. You purchased cage-free eggs, but you didn't segregate 7 it for particular products?</p> <p>8 A. That's correct.</p> <p>9 Q. Why did the company start purchasing cage-free eggs?</p> <p>10 A. I would say social pressures, as well as we've 11 committed to the Humane Society that we would purchase 12 a million cage-free eggs.</p> <p>13 Q. When was that?</p> <p>14 A. 2011.</p> <p>15 Q. Did there -- were there any other commitments made with 16 the Humane Society?</p> <p>17 A. I don't know if there were any commitments. But there 18 -- I know that there were discussions with the Humane 19 Society about animal welfare. That was back in 2007 I 20 want to say.</p> <p>21 Q. Okay. Let's go back. You mentioned a few times that 22 there were -- there were some consumer correspondence. 23 I don't know if you used the word correspondence. 24 That's my word. Consumer correspondence about animal 25 welfare. Is that fair?</p>	<p style="text-align: right;">133</p> <p>1 to include any animal welfare requirements in its -- 2 you know, from its egg product suppliers? Did you -- 3 did you hear any discussion of that, or did Kellogg's 4 have any discussion of that prior to 2005?</p> <p>5 MR. CAMPBELL: Objection as to form.</p> <p>6 BY MR. GREENE: Yeah. Good objection.</p> <p>7 Withdrawn.</p> <p>8 BY MR. GREENE:</p> <p>9 Q. Prior to 2005, was there any internal discussion at 10 Kellogg's about animal welfare issues related to egg 11 production?</p> <p>12 A. Not that I was able to find.</p> <p>13 Q. And from the people you spoke to, you're saying no one 14 was aware of any such discussions prior to 2005?</p> <p>15 A. No.</p> <p>16 Q. And so the first indication that you are aware of that 17 there's any discussion going on of animal welfare 18 issues related to egg production comes in this 2006 19 correspondence that seems to relate back to 2005; is 20 that correct?</p> <p>21 A. That is correct.</p> <p>22 Q. And tell me about that correspondence.</p> <p>23 A. It was just -- it was an e-mail written stating that we 24 had had some social pressures I'll say -- I can't 25 remember if it was from consumers or from our</p>

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<p style="text-align: right;">134</p> <p>1 customers, which would be grocery stores. Asking about</p> <p>2 either the UEP or cage-free eggs, what we were going to</p> <p>3 potentially do about it. That's kind of the gist of</p> <p>4 what I think that e-mail had stated.</p> <p>5 (Exhibit No. 13 marked)</p> <p>6 MS. ANSARI: This is 13?</p> <p>7 BY MR. GREENE:</p> <p>8 Q. I'm asking you to look at Neal Exhibit 13. Mr. Neal,</p> <p>9 is this the correspondence that you were referring to</p> <p>10 before?</p> <p>11 A. I don't believe that this is.</p> <p>12 Q. It's got different dates. If this is 2007, you were</p> <p>13 referring to 2006.</p> <p>14 A. '06. That's correct.</p> <p>15 Q. You believe what you were looking for is even earlier?</p> <p>16 A. Yes.</p> <p>17 Q. If you take a look at the last e-mail in the document,</p> <p>18 the first e-mail in time, from Linda Pell to Celeste</p> <p>19 Clark and James Poppins. Do you see that one?</p> <p>20 A. I do.</p> <p>21 Q. March 2nd, 2007. I don't know if I read the bates in</p> <p>22 for these. Neal Exhibit 13 is KEL00 -- lots of 0s, 370</p> <p>23 to 372. It says this is -- and who is Linda Pell?</p> <p>24 A. Linda Pell was quality.</p> <p>25 Q. And I think you testified earlier at least at this</p>	<p style="text-align: right;">136</p> <p>1 use of eggs from battery-caged chickens?</p> <p>2 A. Somewhat, yes.</p> <p>3 Q. What do you know about that?</p> <p>4 A. I know that the Humane Society had requested us to</p> <p>5 change our eggs to cage-free eggs. We had looked at</p> <p>6 the opportunity to do that to see what the pricing</p> <p>7 differences were and whether or not it was worthwhile</p> <p>8 for us to change. And at that time we decided that it</p> <p>9 was not.</p> <p>10 Q. I'm sorry. I didn't mean to interrupt you.</p> <p>11 A. That's all right. It wasn't worth it at that time to</p> <p>12 change to cage-free eggs.</p> <p>13 Q. Who was involved in that discussion that you just</p> <p>14 referenced?</p> <p>15 A. Yeah. I think it would have been the people that you</p> <p>16 see here, as well as I think at the beginning of the</p> <p>17 e-mail chain it becomes -- Dave Butler would have been</p> <p>18 the buyer at that point.</p> <p>19 Q. Butler would have been the buyer in 2007?</p> <p>20 A. Yes.</p> <p>21 Q. It says here the Humane Society has been pushing</p> <p>22 MorningStar Farms. That's the way the e-mail reads.</p> <p>23 It doesn't say Kellogg. Does it make sense that the --</p> <p>24 to speak of the Humane Society pushing MorningStar</p> <p>25 Farms? Is MorningStar Farms a separate decision-making</p>
<p style="text-align: right;">135</p> <p>1 point animal welfare would have also fallen within her</p> <p>2 purview; is that correct?</p> <p>3 A. That's correct.</p> <p>4 Q. Who is Celeste Clark?</p> <p>5 A. Celeste Clark, she probably at this point was I think</p> <p>6 the vice president of communications.</p> <p>7 Q. Is that the position that Chris Charles now has?</p> <p>8 A. That's correct.</p> <p>9 Q. James Poppins?</p> <p>10 A. I have -- I don't recognize that.</p> <p>11 Q. Sarah Olsen?</p> <p>12 A. No.</p> <p>13 Q. Let me see if I got this right. Trinh Le?</p> <p>14 A. Yeah. I don't recognize the name.</p> <p>15 Q. Don't recognize those names?</p> <p>16 A. No.</p> <p>17 Q. The e-mail from Ms. Pell says, the Humane Society has</p> <p>18 been pushing MorningStar Farms to discontinue use of</p> <p>19 eggs from battery-caged chickens for over a year. We</p> <p>20 discussed this with the brand last fall. Do you see</p> <p>21 that?</p> <p>22 A. Yep.</p> <p>23 Q. What discussions occurred -- well, let's push back a</p> <p>24 moment. Are you familiar with the pressure from the</p> <p>25 Humane Society to MorningStar Farms to discontinue the</p>	<p style="text-align: right;">137</p> <p>1 unit at Kellogg's?</p> <p>2 A. No.</p> <p>3 Q. So how do you interpret the line the Humane Society has</p> <p>4 been pushing MorningStar Farms?</p> <p>5 A. I would declare that as MorningStar Farms the brand,</p> <p>6 which is, as we've discussed, a meatless product. So</p> <p>7 vegans and such, knowing that there's eggs in that</p> <p>8 product, if a vegan would want it, they can't eat it</p> <p>9 because there's egg product in it. So that's how I</p> <p>10 would -- there's a brand there that is -- I'll say</p> <p>11 they're targeting that brand.</p> <p>12 Q. Let me see if I understand. MorningStar Farms is a</p> <p>13 brand that may appeal to consumers who don't eat meat.</p> <p>14 A. That's correct.</p> <p>15 Q. And the possibility here is that consumers who don't</p> <p>16 eat meat might be more sensitive to animal welfare</p> <p>17 issues than other consumers?</p> <p>18 A. Yes. That's what I was -- yeah.</p> <p>19 Q. So is that why the --</p> <p>20 A. The push for more --</p> <p>21 Q. -- pressure is being focused at least initially on</p> <p>22 MorningStar Farms as opposed to Kellogg's as a whole?</p> <p>23 A. I would agree.</p> <p>24 Q. Then there's a reference in the third paragraph to two</p> <p>25 activists groups. Compassion Over Killing and Vegan</p>

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<p style="text-align: right;">138</p> <p>1 Outrage -- Outreach launched a website last Tuesday 2 encouraging consumers to contact MorningStar Farms 3 about the use of caged eggs in our products. This is 4 from Linda Pell's e-mail. As of today we received 602 5 consumer contacts about the use of eggs. 6 So these are two -- Compassion Over Killing 7 and Vegan Outreach, these are two different groups, 8 right, different than the Humane Society? 9 A. That's how I understand it. 10 Q. So at this point in 2007, there are three different 11 activist groups in the picture, right? 12 A. Yes. 13 Q. Why would Kellogg's be concerned about the views of 14 organizations like the Humane Society? 15 A. Because they're -- I guess because they represent 16 consumers or how consumers view things. 17 Q. Is there also a concern about publicity? 18 A. Absolutely. 19 Q. Negative publicity? 20 A. I think that there would be, yeah. 21 Q. Is there -- was there a concern at Kellogg's that if 22 Kellogg's was not responsive in some way to the Humane 23 Society, that the Humane Society might publically 24 criticize Kellogg's? 25 A. Yes.</p>	<p style="text-align: right;">140</p> <p>1 into the products? 2 A. That is correct. 3 Q. Are you familiar with other occasions in which -- 4 separate and apart from the animal welfare issue, other 5 occasions in which Kellogg's had explored the 6 possibility of reformulated products to reduce the 7 usage of eggs? 8 A. Yes. 9 Q. What other circumstances? 10 A. It was just a matter of reformulating because of the 11 higher cost of eggs. So trying to reduce the amount of 12 egg within the products. 13 Q. Was that actually done at various times? 14 A. Yes. 15 Q. When was that done? 16 A. That would have been 2011, 2011, 2012. 17 Q. Was it also done earlier? 18 A. I think those are the two times that I know about. 19 (Exhibit No. 14 marked) 20 BY MR. GREENE: 21 Q. For the record, Neal Exhibit 14 is KEL00004008. Have 22 you seen Exhibit 14 before? 23 A. I have not. 24 Q. This is a -- the initial e-mail, again, there are two 25 e-mails. But the first one is from Kelly Tobey to</p>
<p style="text-align: right;">139</p> <p>1 Q. Not a good position for a consumer products company to 2 be in, correct? 3 A. That's correct. 4 Q. So in any event, out of this 2007 discussion, we've got 5 e-mails going from March 2nd to March 15th. What came 6 out of these discussions as far as any decisions? 7 A. As far as decisions, what had happened, there was -- 8 MorningStar Farms did elect to reduce the amount of 9 eggs in their products. 10 Q. And how did they do that? 11 A. They just lowered the quantity of the eggs that they 12 purchased. 13 Q. And did they -- did they produce fewer products? 14 A. No. 15 Q. So how did they go about reducing the quantity of eggs 16 in their product? 17 A. They would have reformulated the product. 18 Q. So MorningStar Farms reformulated its products to use 19 less eggs than before? 20 A. That's correct. 21 Q. And what did they substitute in there formulas for what 22 formerly had been eggs? 23 A. That I don't know. 24 Q. But your understanding is at the end of the day they 25 reformulated to reduce the quantity of eggs that went</p>	<p style="text-align: right;">141</p> <p>1 Christine Wentworth and John Wolf on I think 2 December 1, 2003. You've identified Kelly Tobey before 3 as the egg buyer during this period, correct? 4 A. That's correct. 5 Q. Christine Wentworth was her supervisor? 6 A. That's correct. 7 Q. John Wolf was Ms. Wentworth's supervisor? 8 A. That's correct. 9 Q. And you may have identified him before. But do you 10 know who Joe Tabiliwitz was? 11 A. He was the vice president of all of procurement. 12 Q. Okay. 13 A. So he would have been John Wolf's boss, manager. 14 Q. Okay. Again, as with always, you can read whatever 15 portions you want. I'm looking at the beginning of the 16 second paragraph. There are two projects going on to 17 help reduce our risk in dried egg white usage. How do 18 you read the phrase reduce our risk in dried egg white 19 usage? What does that mean? 20 A. That the market is going up. So I don't know what -- 21 so to reduce that risk of the market going up, they're 22 looking at two different things to reduce Kellogg's 23 risk on the dried egg whites which I -- to me it's -- 24 if you read the paragraph before, it says it will not 25 share in the risk in eggs for 2004, which I thought was</p>

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<p style="text-align: right;">142</p> <p>1 the flat price.</p> <p>2 Q. I believe we saw a correspondence after December of</p> <p>3 2003 before. So if you want to go back and look, I</p> <p>4 think the flat pricing correspondence comes from</p> <p>5 January of 2004. Want to take a look?</p> <p>6 A. Yeah.</p> <p>7 Q. Go ahead.</p> <p>8 A. I think that was in '04.</p> <p>9 Q. Yeah. If you look at Neal Exhibit 6 --</p> <p>10 A. The whole eggs there would have been flat priced,</p> <p>11 right?</p> <p>12 Q. I believe your testimony before was that the</p> <p>13 correspondence in late January 2004 indicated an</p> <p>14 additional flat price contract. And the second page of</p> <p>15 Neal Exhibit 6 refers to a whole eggs contract</p> <p>16 extending through December 31, 2004. Do you see that?</p> <p>17 A. Uh-huh. Yes.</p> <p>18 Q. So it looks as though when we're looking at Exhibit 14,</p> <p>19 this is -- this is before they signed that contract.</p> <p>20 A. Yes.</p> <p>21 Q. Okay. About a month or two before. And at this point,</p> <p>22 it appears that Kellogg's is facing the prospect of</p> <p>23 having to buy dried egg whites in a rising market,</p> <p>24 correct?</p> <p>25 A. That is correct.</p>	<p style="text-align: right;">144</p> <p>1 specification. Currently only Bender Goodman is</p> <p>2 qualified to supply that product. Do you see that?</p> <p>3 A. I do.</p> <p>4 Q. At this point there was only one egg products company</p> <p>5 that the egg buyer could turn to for this product at</p> <p>6 that time?</p> <p>7 A. At that time, yes.</p> <p>8 Q. Okay. So going back to the animal welfare discussion,</p> <p>9 did MorningStar -- did Kellogg's reformulate</p> <p>10 MorningStar Farms products to use less eggs?</p> <p>11 A. Yes.</p> <p>12 Q. And they did that in response to animal welfare</p> <p>13 concerns?</p> <p>14 A. Yes.</p> <p>15 Q. And that was done when?</p> <p>16 A. 2007.</p> <p>17 Q. Okay. Did Kellogg's do anything else in that</p> <p>18 timeframe, the 2007 timeframe, as a response to animal</p> <p>19 welfare concerns in connection with egg production?</p> <p>20 A. No.</p> <p>21 Q. Just the reformulation?</p> <p>22 A. Just the reformulation.</p> <p>23 Q. When you were an egg buyer at Kellogg's in 2009 to 2013</p> <p>24 timeframe, did you read publications relating to the</p> <p>25 egg industry?</p>
<p style="text-align: right;">143</p> <p>1 Q. And so Kellogg's is considering two different</p> <p>2 strategies to deal with rising prices, correct?</p> <p>3 A. That is correct.</p> <p>4 Q. One of the strategies is to reformulate to use less</p> <p>5 eggs, correct?</p> <p>6 A. Yep.</p> <p>7 Q. Okay. And this is the -- it's in the line, "The first</p> <p>8 one is the replacement of egg whites and veggie foods</p> <p>9 with Methocellulose." (sic) Do you see that?</p> <p>10 A. I do.</p> <p>11 Q. And was that project undertaken, this project to</p> <p>12 explore the replacement of egg whites with</p> <p>13 methylcellulose?</p> <p>14 A. Not that I know of.</p> <p>15 Q. Do you know one way or the other?</p> <p>16 A. I don't.</p> <p>17 Q. But your experience is that when Kellogg's is</p> <p>18 confronted with rising prices, one option Kellogg's</p> <p>19 sometimes considers is simply to reduce egg usage,</p> <p>20 correct?</p> <p>21 A. Yes.</p> <p>22 Q. And you've had personal experience with that, correct?</p> <p>23 A. I have.</p> <p>24 Q. Neal Exhibit 14 also goes on to say the second project</p> <p>25 is to improve an alternate vendor for the Worthington</p>	<p style="text-align: right;">145</p> <p>1 A. Yes.</p> <p>2 Q. Let me ask you about some of these publications and ask</p> <p>3 if they are publications that you read as part of --</p> <p>4 part of your regular routine. Egg Outlook?</p> <p>5 A. No.</p> <p>6 Q. Do you know if others at Kellogg's read Egg Outlook?</p> <p>7 A. No.</p> <p>8 Q. I have a -- I don't want to keep racing through. I</p> <p>9 have a Kellogg's produced version of it. Would you</p> <p>10 recognize it by Sparks Companies?</p> <p>11 A. No. That doesn't sound familiar either.</p> <p>12 Q. Let me just mark one of these.</p> <p>13 (Exhibit No. 15 marked)</p> <p>14 BY MR. GREENE:</p> <p>15 Q. I have a number of publications with Kellogg's bates</p> <p>16 numbers on them. I'm not sure I'm going to go through</p> <p>17 and mark each and every one. But is this -- I'm</p> <p>18 showing you Exhibit 15, Kellogg's KEL00003028 to 3053.</p> <p>19 It's Sparks Companies, Inc., Eggs Outlook. Is this a</p> <p>20 publication you recognize?</p> <p>21 A. No, it is not.</p> <p>22 Q. Is this a publication that predecessors of yours who</p> <p>23 are egg buyers at Kellogg's read?</p> <p>24 A. They must have.</p> <p>25 Q. Yeah.</p>

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<p style="text-align: right;">146</p> <p>1 A. I don't recognize it, though.</p> <p>2 Q. You don't recognize it but it's -- it's a Kellogg's</p> <p>3 produced document?</p> <p>4 A. Right.</p> <p>5 Q. You're assuming somebody was subscribing to it?</p> <p>6 A. Yep.</p> <p>7 Q. Okay. What about a publication called Weekly Wire?</p> <p>8 A. No.</p> <p>9 (Exhibit No. 16 marked)</p> <p>10 THE WITNESS: This is the same publication,</p> <p>11 just a different -- still from Sparks.</p> <p>12 BY MR. GREENE:</p> <p>13 Q. Right. Neal Exhibit 16, KEL00019389, 19390. As you</p> <p>14 pointed out, it's also Sparks Company, Inc. This one</p> <p>15 says Weekly Wire. Is this a publication that you used</p> <p>16 in your egg buying?</p> <p>17 A. Not during mine, no.</p> <p>18 Q. Do you know if your predecessors used it?</p> <p>19 A. It was Kellogg produced. They must have.</p> <p>20 Q. I'm just going to go -- I'm going to try and mark as</p> <p>21 many of these as quickly as possible to figure out what</p> <p>22 you recognize. Would your answer be the same for any</p> <p>23 Sparks Company publication?</p> <p>24 A. My answer would be the same for any Sparks.</p> <p>25 Q. So anything Sparks Company, if I asked you -- you did</p>	<p style="text-align: right;">148</p> <p>1 (Exhibit No. 18 marked)</p> <p>2 BY MR. GREENE:</p> <p>3 Q. Neal Exhibit 18, KEL00003416 to 3418. This one is from</p> <p>4 a company called Informa Economics, an AGRA Informa</p> <p>5 Company. This particular issue is October 8th, 2004.</p> <p>6 Is this a publication you read when you were an egg</p> <p>7 products buyer?</p> <p>8 A. It is, yes.</p> <p>9 Q. And to your knowledge, is this a publication that your</p> <p>10 predecessors at Kellogg's -- your egg buying</p> <p>11 predecessors at Kellogg's would have read?</p> <p>12 A. Just to clarify, this is something that the risk</p> <p>13 management team at Kellogg's would have subscribed to.</p> <p>14 With it having egg portions in it, then we got to read</p> <p>15 it as well. So I think it was meant for everything,</p> <p>16 but I think -- I know I read it. I can't answer for</p> <p>17 the previous people, but it was available to them.</p> <p>18 Q. You're pointing out this is not just about eggs.</p> <p>19 A. Correct.</p> <p>20 Q. It includes a section on eggs.</p> <p>21 A. Yes.</p> <p>22 Q. I understand. The Informa group also published a</p> <p>23 document specifically focused on the egg sector?</p> <p>24 A. Not that I had ever reviewed.</p> <p>25 MR. GREENE: Let's mark that, please.</p>
<p style="text-align: right;">147</p> <p>1 not review anything produced by the Sparks Company as</p> <p>2 part up your routine when you were the egg product</p> <p>3 buyer?</p> <p>4 A. That's correct.</p> <p>5 Q. And if you saw a Sparks Company publication marked with</p> <p>6 a Kellogg's stamp, you would assume that your</p> <p>7 predecessors used it in some way?</p> <p>8 A. That is correct.</p> <p>9 (Exhibit No. 17 marked)</p> <p>10 BY MR. GREENE:</p> <p>11 Q. Exhibit 17, KEL000019024 to 19026. This is an Urner</p> <p>12 Barry Publication, Inc., Urner Barry Price-Current.</p> <p>13 This particular one is dated Friday, June 16, 2000. Do</p> <p>14 you recognize this publication?</p> <p>15 A. This one I do.</p> <p>16 Q. Okay. Is this a publication -- I realize the date here</p> <p>17 on this is 2000. But is this a publication that you</p> <p>18 used in your routine?</p> <p>19 A. Yes.</p> <p>20 Q. Did you read the Urner Barry publications?</p> <p>21 A. Yes.</p> <p>22 Q. Did you read the articles in addition to the price</p> <p>23 quotes?</p> <p>24 A. Typically, yes.</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">149</p> <p>1 (Exhibit No. 19 marked)</p> <p>2 BY MR. GREENE:</p> <p>3 Q. I'm showing you Neal Exhibit 19, KEL00001829 to 1861.</p> <p>4 This is Informa Economics again. But this is a</p> <p>5 document entitled Egg Sector Update January. Do you</p> <p>6 see that?</p> <p>7 A. I do.</p> <p>8 Q. Okay. This appears to be an Informa Economics</p> <p>9 publication focused exclusively on the egg and egg</p> <p>10 products sector, correct?</p> <p>11 A. That's correct.</p> <p>12 Q. Is this a publication you used when you were an egg</p> <p>13 products buyer?</p> <p>14 A. Informa is, yes.</p> <p>15 Q. And these particular Egg Sector --</p> <p>16 A. I've never seen the Egg Sector.</p> <p>17 Q. Okay. So you've not seen a publication like this one?</p> <p>18 A. Correct. But we did have Informa.</p> <p>19 Q. You had Informa. But you don't recognize the</p> <p>20 publication focused on the egg sectors?</p> <p>21 A. That's correct.</p> <p>22 Q. And, again, I'll point out these are produced by</p> <p>23 Kellogg's.</p> <p>24 A. Yep.</p> <p>25 Q. Do you know did your predecessors receive and review</p>

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<p style="text-align: right;">150</p> <p>1 the Informa Egg Sector reports?</p> <p>2 A. I would assume that they do.</p> <p>3 Q. Are there any other publications in the egg -- in egg</p> <p>4 products area that you read when you were in your</p> <p>5 position as an egg buyer?</p> <p>6 A. No. You covered the two that I covered.</p> <p>7 Q. Let me give you some additional names. USDA World</p> <p>8 Agricultural Supply and Demand Estimates. Did you read</p> <p>9 those?</p> <p>10 A. I did read those. I wouldn't consider those -- what do</p> <p>11 you want to call them -- publications that were --</p> <p>12 these are ones that we paid for. The USDA is a free</p> <p>13 publication. So yeah, we do get the USDA as well.</p> <p>14 Q. You did read the USDA World Agricultural Supply and</p> <p>15 Demand Estimates?</p> <p>16 A. Yes.</p> <p>17 Q. What about USDA Egg Market News Reports?</p> <p>18 A. Can I view that one just to see if it is?</p> <p>19 Q. We'll mark it.</p> <p>20 (Exhibit No. 20 marked)</p> <p>21 BY MR. GREENE:</p> <p>22 Q. This is KEL00021289 through 21293. Is this -- this is</p> <p>23 USDA Egg Market News Reports. This particular one</p> <p>24 happens to be January 10, 2003.</p> <p>25 A. I've never seen anything like this one.</p>	<p style="text-align: right;">152</p> <p>1 were an egg buyer?</p> <p>2 A. No.</p> <p>3 Q. Do you know if previous egg buyers at Kellogg's read</p> <p>4 Feedstuffs?</p> <p>5 A. No, I do not.</p> <p>6 Q. What about Egg Industry magazine?</p> <p>7 A. No.</p> <p>8 Q. Do you know if previous buyers at Kellogg's read that</p> <p>9 one?</p> <p>10 A. I do not.</p> <p>11 Q. What about Watt Poultry?</p> <p>12 A. No.</p> <p>13 Q. Do you know if previous egg buyers at Kellogg's read</p> <p>14 Watt Poultry?</p> <p>15 A. No.</p> <p>16 MR. GREENE: We've been going a while. Why</p> <p>17 don't we take a break.</p> <p>18 VIDEOGRAPHER: Going off the record at</p> <p>19 2:43 p.m.</p> <p>20 (Recess taken)</p> <p>21 VIDEOGRAPHER: We're back on the record at</p> <p>22 2:58 p.m.</p> <p>23 BY MR. GREENE:</p> <p>24 Q. Mr. Neal, during the period from 1999 to 2008, who were</p> <p>25 the egg products suppliers to Kellogg's?</p>
<p style="text-align: right;">151</p> <p>1 Q. Okay. Do you know if your predecessors -- when I say</p> <p>2 "predecessors," I mean, previous Kellogg's egg buyers.</p> <p>3 If they received these reports?</p> <p>4 A. I do not know if they --</p> <p>5 Q. Do you know if they used these reports?</p> <p>6 A. I don't.</p> <p>7 Q. You see that there's a Kellogg's stamp on them?</p> <p>8 A. Yes.</p> <p>9 Q. But you don't know whether anybody actually read them?</p> <p>10 A. Correct.</p> <p>11 Q. Are you familiar with NASS, N-A-S-S, Chicken and Eggs</p> <p>12 Report?</p> <p>13 A. I'm familiar with the NASS, the dairy report. But --</p> <p>14 (Exhibit No. 21 marked)</p> <p>15 BY MR. GREENE:</p> <p>16 Q. This is KEL00019940 through 959. This is NASS Chickens</p> <p>17 and Eggs is the title. This particular version says</p> <p>18 released June 23rd, 2003, by the National Agricultural</p> <p>19 Statistics Service. Is this a publication you reviewed</p> <p>20 when you were --</p> <p>21 A. Not when I was the egg buyer.</p> <p>22 Q. Do you know if your predecessors, that is, previous egg</p> <p>23 buyers at Kellogg's, reviewed this publication?</p> <p>24 A. No.</p> <p>25 Q. How about Feedstuffs? Did you read Feedstuffs when you</p>	<p style="text-align: right;">153</p> <p>1 A. Michael Foods and Wabash are the two main egg suppliers</p> <p>2 that I know about. There was an egg replacer that was</p> <p>3 done by Mays Chemical. Those are the main ones that I</p> <p>4 know of.</p> <p>5 Q. And would the answer be the same post-2009?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Was Rose Acre a supplier of --</p> <p>8 A. I don't know if --</p> <p>9 Q. Let me finish the whole question. Was Rose Acre a</p> <p>10 supplier of egg products to Kellogg's?</p> <p>11 A. Yes.</p> <p>12 Q. What did they supply?</p> <p>13 A. I'm not certain. I just remember within the financial</p> <p>14 document that they were -- we had purchased egg</p> <p>15 products from them at some point. I'm not certain</p> <p>16 when.</p> <p>17 Q. During your period as an egg buyer, was Rose Acre a</p> <p>18 supplier?</p> <p>19 A. No.</p> <p>20 Q. You mentioned Wabash valley.</p> <p>21 A. Yes.</p> <p>22 Q. You mentioned Mays Chemical Company.</p> <p>23 A. Yes.</p> <p>24 Q. They were a supplier?</p> <p>25 A. They were a supplier. But it was an egg replacer. It</p>

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<p style="text-align: right;">154</p> <p>1 wasn't -- it didn't have any egg in it.</p> <p>2 Q. Any other companies other than the ones we've</p> <p>3 discussed?</p> <p>4 A. For the time period that you had stated?</p> <p>5 Q. Yes.</p> <p>6 A. Not that I know of.</p> <p>7 (Exhibit No. 22 marked)</p> <p>8 BY MR. GREENE:</p> <p>9 Q. I'm showing you what's been marked as Neal Exhibit 22.</p> <p>10 I think this one is a double-sided copy of the Second</p> <p>11 Amended Complaint of -- in this litigation of the Kraft</p> <p>12 plaintiffs which include -- you'll see, Mr. Neal, in</p> <p>13 the middle of the page there's a section that says</p> <p>14 Plaintiffs, Kraft, Kellogg Company, General Mills, and</p> <p>15 Nestle. Do you see that?</p> <p>16 A. I do.</p> <p>17 Q. And this is a filed version, I believe, of the</p> <p>18 complaint. And that's why if you go through there's</p> <p>19 lots of redacted black sections. If you flip through,</p> <p>20 you'll see parts that aren't in the public record.</p> <p>21 Have you seen this before, the second amended</p> <p>22 complaint?</p> <p>23 A. I don't think that I've seen this. No.</p> <p>24 Q. Have you seen any version of the complaints that have</p> <p>25 been filed by Kellogg in this case?</p>	<p style="text-align: right;">156</p> <p>1 The top 20 egg producers owned approximately 55 percent</p> <p>2 of laying hens. Do you see that?</p> <p>3 A. I do.</p> <p>4 Q. Then there's a table presented by the plaintiffs of the</p> <p>5 top 20 producers next -- the top 20 producers, layers</p> <p>6 in production and percentage of layers in U.S. Do you</p> <p>7 see that?</p> <p>8 A. Uh-huh.</p> <p>9 Q. I'd like you to take a look at the names of the 20 top</p> <p>10 producers.</p> <p>11 A. Yes.</p> <p>12 Q. And my question is as an egg buyer, egg products buyer</p> <p>13 from 2009 to 2013, which of those did you view as</p> <p>14 viable candidates to supply Kellogg's with its egg</p> <p>15 products?</p> <p>16 A. From 2009 to 2013. I've had talks with Rembrandt,</p> <p>17 Michael Foods. I did talk to Sparboe but that was just</p> <p>18 in 2013. Michael Foods and that is it.</p> <p>19 Q. Okay. So you --</p> <p>20 MS. ANSARI: Read the back of the page.</p> <p>21 There's --</p> <p>22 THE WITNESS: Oh, I'm sorry. Yeah. I didn't</p> <p>23 -- I don't recognize any of those.</p> <p>24 BY MR. GREENE:</p> <p>25 Q. All right. So of the 20, you mentioned Rembrandt,</p>
<p style="text-align: right;">155</p> <p>1 A. No.</p> <p>2 Q. Did anybody talk to you about the case before the</p> <p>3 original complaint was filed?</p> <p>4 A. No.</p> <p>5 Q. When was the first time that you had discussions with</p> <p>6 anyone regarding this litigation?</p> <p>7 A. That there was a case?</p> <p>8 Q. Yes.</p> <p>9 A. It would have been 2011, March of 2011.</p> <p>10 Q. Did you learn about the case before or after it was</p> <p>11 filed?</p> <p>12 A. I didn't learn about the case -- the 2011 was just a</p> <p>13 matter of I think our counsel saying to retain</p> <p>14 everything you can. That's all I really knew about it</p> <p>15 at that point.</p> <p>16 Q. Do you know if at the time you heard about the case if</p> <p>17 the lawsuit had already been filed?</p> <p>18 A. I didn't know.</p> <p>19 Q. I want to direct your attention -- I will say as I</p> <p>20 always do, you can read any portion of this, but I'm</p> <p>21 guessing you don't want to read all 98 pages. This is</p> <p>22 the Kraft, Kellogg, Nestle, General Mills complaint.</p> <p>23 If you look at page 46, paragraph 105, there is a -- it</p> <p>24 reads, as of 2010, the ten largest producers owned</p> <p>25 approximately 49 percent of the total industry layers.</p>	<p style="text-align: right;">157</p> <p>1 Michael Foods, and Sparboe.</p> <p>2 A. That's correct.</p> <p>3 Q. Okay.</p> <p>4 A. And I had heard of Rose Acre, but I never had contacted</p> <p>5 them --</p> <p>6 Q. Okay.</p> <p>7 A. -- or talked to them.</p> <p>8 Q. During your period as egg buyer, did any of the other</p> <p>9 17 companies -- let me go back. There are 20 companies</p> <p>10 listed here, correct?</p> <p>11 A. Uh-huh. Yes.</p> <p>12 Q. You've identified Rembrandt, Michael Foods, and Sparboe</p> <p>13 as companies you talked to, correct?</p> <p>14 A. That's correct.</p> <p>15 Q. Okay. That's three. My question is during the time</p> <p>16 that you were egg buyer, did any of the other 17</p> <p>17 companies make a proposal to supply Kellogg with egg</p> <p>18 products?</p> <p>19 A. I would say yes. I know Rose Acres -- I know Chris</p> <p>20 Chandler looked at Rose Acres. The thing I don't know</p> <p>21 is whether or not all of these are liquid or dried</p> <p>22 suppliers or if they're shell egg suppliers as well</p> <p>23 because that would immediately eliminate them from</p> <p>24 anything that we would do if they were just shell egg</p> <p>25 suppliers.</p>

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<p style="text-align: right;">158</p> <p>1 Q. Say that again.</p> <p>2 A. So if like -- I'll just use Cal-Maine because they're</p> <p>3 the top. If they were just strictly a shell egg</p> <p>4 supplier for supermarkets or for some small business</p> <p>5 down the road, we wouldn't even turn to talk to them</p> <p>6 because the way we buy our eggs are in bulk, either</p> <p>7 liquid, dried -- liquid or dried. And I'm not certain</p> <p>8 -- that's why -- I don't know if that's why I don't</p> <p>9 recognize these or not but --</p> <p>10 Q. You were the egg buyer from 2009 to 2013, correct?</p> <p>11 A. That's correct.</p> <p>12 Q. So what I'm asking right now -- and I'll put Rose Acre</p> <p>13 in the category of -- the other category. So that</p> <p>14 would make four.</p> <p>15 A. Yeah.</p> <p>16 Q. You'd have Rembrandt, Michael Foods, Sparboe, and Rose</p> <p>17 Acre. Okay?</p> <p>18 A. Yes.</p> <p>19 Q. So with those four set aside, during the period that</p> <p>20 you were egg products buyer, did you receive any</p> <p>21 proposals from any of the other 16 companies to supply</p> <p>22 egg products to Kellogg?</p> <p>23 A. No.</p> <p>24 Q. To your knowledge, did Kellogg's ever receive proposals</p> <p>25 from any of these other 16 companies to supply egg</p>	<p style="text-align: right;">160</p> <p>1 A. Not always.</p> <p>2 Q. Okay. If you look at the document bates numbered 3209.</p> <p>3 This is a page that is devoted to eggs, correct?</p> <p>4 A. That's correct.</p> <p>5 Q. And help me with a few acronyms. What is KNA?</p> <p>6 A. Kellogg North America.</p> <p>7 Q. And that's -- is that different than KUSA?</p> <p>8 A. No. I mean, it's not. Not for eggs it wouldn't be.</p> <p>9 Q. Canada jumps into my mind. Is Canada part of KNA but</p> <p>10 not KUSA?</p> <p>11 A. They're also part of KNA, part of Kellogg North</p> <p>12 America.</p> <p>13 Q. Would they be part of KUSA?</p> <p>14 A. Yes -- probably not. There are no egg products for</p> <p>15 Canada, though, that we use.</p> <p>16 Q. You don't purchase products for Canadian operations?</p> <p>17 A. That's correct. For our Canadian plants.</p> <p>18 Q. In this document 3209, under risks and opportunity to</p> <p>19 strategy, toward the bottom of the page, there's a dash</p> <p>20 that reads, farmers holding onto older hens due to</p> <p>21 increased profits, new flocks must be given increased</p> <p>22 cage space per animal welfare guidelines. Do you --</p> <p>23 focusing on the last portion of that, do you know what</p> <p>24 the part about animal welfare guidelines is a reference</p> <p>25 to?</p>
<p style="text-align: right;">159</p> <p>1 products to Kellogg's?</p> <p>2 A. That I don't know.</p> <p>3 Q. Okay. And as the 30(b)(6) spokesperson, you're the</p> <p>4 best person I can ask.</p> <p>5 A. Yep, I know.</p> <p>6 Q. To the best of your knowledge, none of the other 16</p> <p>7 made proposals to Kellogg's?</p> <p>8 A. Not that I know of.</p> <p>9 (Exhibit No. 23 marked)</p> <p>10 BY MR. GREENE:</p> <p>11 Q. Mr. Neal, I'm sorry. But I'm going to have to find my</p> <p>12 spot that I lost. This is Neal Exhibit 23. It is</p> <p>13 KEL00003178 to 3220. Okay. Could you turn -- and,</p> <p>14 again, as always, you can read any portion of this.</p> <p>15 What is this -- this is a document that says</p> <p>16 procurement overview 4-1-04. Do you recognize this</p> <p>17 type of document?</p> <p>18 A. Yes.</p> <p>19 Q. What is this document?</p> <p>20 A. This would have been just like the 5 and 7 from before.</p> <p>21 This would have been probably a 4 and 8. So they're</p> <p>22 looking at 4 months of actuals -- well, actually,</p> <p>23 because it's 4-1, it's probably 3 and 9. So it's 3</p> <p>24 months of actuals, 9 months of forecasting.</p> <p>25 Q. Is there one of these generated every month?</p>	<p style="text-align: right;">161</p> <p>1 A. I wasn't there for 2004, but my assumption would be to</p> <p>2 abide by UEP guidelines.</p> <p>3 Q. Kellogg at some point certainly prior to April 2004</p> <p>4 become aware of the UEP certified guidelines?</p> <p>5 A. Prior to 2004? The documents that I had found were</p> <p>6 dated 2002.</p> <p>7 Q. Okay. So in 2002, Kellogg's became aware of the UEP</p> <p>8 Certified Program?</p> <p>9 A. That's correct.</p> <p>10 Q. And Kellogg's was aware that one of the components of</p> <p>11 the UEP Certified Program was more cage space per hen,</p> <p>12 correct?</p> <p>13 A. That's correct.</p> <p>14 Q. Did Kellogg's as a company have a point of view about</p> <p>15 the UEP Certified Program?</p> <p>16 A. No.</p> <p>17 Q. Was Kellogg's in favor of it?</p> <p>18 A. We were in favor of the publication of what the UEP</p> <p>19 certification was. I mean, there's no -- that's when</p> <p>20 Linda Pell's group had gotten kind of behind it. So I</p> <p>21 would say at that point is where we really took notice</p> <p>22 of it.</p> <p>23 Q. That would have been 2006, 2007?</p> <p>24 A. That's correct.</p> <p>25 Q. Okay. In the period before 2006, 2007, did Kellogg's</p>

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<p style="text-align: right;">162</p> <p>1 have any opinion about the UEP Certified Program?</p> <p>2 A. Not that I saw of anything.</p> <p>3 Q. It appears from various publication that Kellogg's was</p> <p>4 -- as a buyer, was aware of it because of its impact on</p> <p>5 the market, correct?</p> <p>6 A. That's correct.</p> <p>7 Q. But as far as having an opinion about whether it was a</p> <p>8 good idea for animal welfare, Kellogg's did not have a</p> <p>9 view?</p> <p>10 A. Not at this point, I don't think so.</p> <p>11 Q. When did Kellogg's first form a view about the animal</p> <p>12 welfare program?</p> <p>13 A. I would say when Linda Pell started looking at the</p> <p>14 animal welfare in 2006, 2007.</p> <p>15 Q. And at that point, did Kellogg's develop a point of</p> <p>16 view about the UEP Certified Program?</p> <p>17 A. I think there were questions on whether or not what we</p> <p>18 -- what Kellogg's needs to do in accordance with the</p> <p>19 UEP. We didn't -- I would say we didn't go out and</p> <p>20 request that we needed UEP Certified suppliers of egg</p> <p>21 product.</p> <p>22 Q. Did that ever occur? Did there ever come a time when</p> <p>23 Kellogg's requested UEP Certified product?</p> <p>24 A. Not that I've seen formally. But I do know that</p> <p>25 Michael Foods has supplied -- during my buying time,</p>	<p style="text-align: right;">164</p> <p>1 good idea?</p> <p>2 A. At some point there was during my buying time.</p> <p>3 Q. Can you explain that? What do you mean at some point</p> <p>4 there was --</p> <p>5 A. When UEP certification -- it's not -- we don't like</p> <p>6 label it anywhere, or we don't request it from our</p> <p>7 suppliers. It's not in our specifications. At some</p> <p>8 point in about 2000 -- early 2012 there was some talks</p> <p>9 between myself and Dan Bigelow, and I think Linda Pell</p> <p>10 was also in on those talks as far as whether or not we</p> <p>11 should be adding the UEP certification within our</p> <p>12 specifications just in case -- you know, just as a</p> <p>13 fallback.</p> <p>14 Q. Just as a fallback for what?</p> <p>15 A. If there was any social pressures, to show that, hey,</p> <p>16 we do support it and this shows that.</p> <p>17 Q. And what came out of those discussions?</p> <p>18 A. It was kind of a hold course right now, don't change</p> <p>19 anything.</p> <p>20 Q. Has Kellogg's received any criticisms from customers or</p> <p>21 anyone else related to animal welfare issues?</p> <p>22 A. Criticized? I would say -- I would say that there's</p> <p>23 potential of missed opportunity from maybe some of our</p> <p>24 customers from the state of -- I believe it was Whole</p> <p>25 Foods had kind of told us that by -- I couldn't tell</p>
<p style="text-align: right;">163</p> <p>1 that they did supply a certification that they were UEP</p> <p>2 Certified, but --</p> <p>3 Q. What did you understand that to mean?</p> <p>4 A. That they had followed the guidelines, the public</p> <p>5 guidelines of what the UEP had stated they were going</p> <p>6 to be following.</p> <p>7 Q. Was that important to Kellogg's?</p> <p>8 A. Yeah, I think so.</p> <p>9 Q. Why?</p> <p>10 A. From the standpoint of consumers, making sure that</p> <p>11 we're doing the right thing socially.</p> <p>12 Q. When did Kellogg's first become supportive of the idea</p> <p>13 behind the UEP Certified guidelines?</p> <p>14 A. It would probably be -- I'd say probably right around</p> <p>15 2011 when Adaire Putnam's group was kind of formed.</p> <p>16 Q. And you're saying prior to 2011, Kellogg's did not have</p> <p>17 -- withdrawn.</p> <p>18 Prior to 2011, Kellogg's never expressed any</p> <p>19 support for the UEP Certified Program?</p> <p>20 A. In support, I would -- I don't think we requested</p> <p>21 anything from our suppliers to be UEP Certified or to</p> <p>22 document anything back to us of being UEP Certified.</p> <p>23 Q. Okay. Apart from specifications for the products that</p> <p>24 Kellogg's purchased, did Kellogg's have any point of</p> <p>25 view about whether the UEP Certified guidelines were a</p>	<p style="text-align: right;">165</p> <p>1 you the date. But by such a year, if we don't have</p> <p>2 either cage-free eggs in this product, they're not</p> <p>3 going to hold it on shelf. We've always -- I shouldn't</p> <p>4 say always. But we've had the Humane Society of the</p> <p>5 U.S. visit us frequently about the animal welfare acts.</p> <p>6 So I think those are -- from the time that I had</p> <p>7 managed eggs, those are the things that I saw.</p> <p>8 Q. Have the Humane Society or any other advocacy group</p> <p>9 ever publically expressed criticism toward Kellogg's in</p> <p>10 connection with animal welfare issues?</p> <p>11 A. Yes.</p> <p>12 Q. When?</p> <p>13 A. Our annual reports. The Humane Society will come to</p> <p>14 our annual reports and vocalize what they are looking</p> <p>15 for us to do.</p> <p>16 MR. CAMPBELL: You mean annual meeting?</p> <p>17 THE WITNESS: Annual meeting. Sorry.</p> <p>18 MR. CAMPBELL: Yep.</p> <p>19 THE WITNESS: Annual meeting.</p> <p>20 BY MR. GREENE:</p> <p>21 Q. How long has that been going on with the Humane Society</p> <p>22 showing up during annual meetings?</p> <p>23 A. Probably 2007, 2008.</p> <p>24 Q. When the Humane Society has shown up at Kellogg's</p> <p>25 annual meeting, have they identified the animal welfare</p>

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<p style="text-align: right;">166</p> <p>1 issues that are of greatest concern to them?</p> <p>2 A. Yes.</p> <p>3 Q. And have those issues included the treatment of layer</p> <p>4 hens?</p> <p>5 A. It's typically the cage-free is the -- so it would be</p> <p>6 the treatment of layer hens.</p> <p>7 Q. Right. The Humane Society advocating cage-free</p> <p>8 treatment of layer hens, correct?</p> <p>9 A. That's correct.</p> <p>10 Q. And are those protests or -- would you call them</p> <p>11 protests, demonstrations?</p> <p>12 A. Demonstrations, yeah.</p> <p>13 Q. Are those demonstrations of concern to Kellogg?</p> <p>14 A. Absolutely, yeah.</p> <p>15 Q. Why?</p> <p>16 A. Just, again, trying to be a social responsible company.</p> <p>17 Making sure that we're doing everything correct</p> <p>18 socially.</p> <p>19 MR. GREENE: Okay. Let's mark another</p> <p>20 document here.</p> <p>21 (Exhibit No. 24 marked)</p> <p>22 BY MR. GREENE:</p> <p>23 Q. This is Neal Exhibit 24. It's KEL00000387. This is</p> <p>24 two e-mails. There's an e-mail from Linda Pell to</p> <p>25 David Butler dated March 22nd, 2007. This is the first</p>	<p style="text-align: right;">168</p> <p>1 or making sure that our suppliers get UEP</p> <p>2 certification. And just following up on that to see if</p> <p>3 are we requiring UEP certification of our suppliers or</p> <p>4 of our raw materials.</p> <p>5 Q. Okay. And this inquiry from Linda Pell is not just</p> <p>6 generally about animal welfare. It's specifically</p> <p>7 about UEP egg certification, correct?</p> <p>8 A. That's correct.</p> <p>9 Q. And how do you understand Mr. Butler's response?</p> <p>10 A. From what his response is is that right now it's -- in</p> <p>11 the retail segment it's only in shell eggs is where the</p> <p>12 UEP is really concentrating. Over time it will come</p> <p>13 into the egg products that we purchase.</p> <p>14 Q. The first sentence from Mr. Butler to Linda Pell and</p> <p>15 Chris Charles reads, our vendor is not drying eggs that</p> <p>16 are UEP Certified. Who do you understand Mr. Butler to</p> <p>17 be referring to when he says our vendor?</p> <p>18 A. Michael Foods.</p> <p>19 Q. And the next sentence reads, they are not seeking nor</p> <p>20 have they been requested by their customer base to</p> <p>21 obtain UEP certification for the dried product line.</p> <p>22 Do you understand, once again, that sentence refers to</p> <p>23 Michael Foods?</p> <p>24 A. That is correct.</p> <p>25 Q. And do you know, did any action by Kellogg's come out</p>
<p style="text-align: right;">167</p> <p>1 of the e-mails, followed by an e-mail from David Butler</p> <p>2 to Linda Pell and Chris Charles copying Christine</p> <p>3 Wentworth and John Wolf. Subject UEP egg</p> <p>4 certification. Is that correct?</p> <p>5 A. That's correct.</p> <p>6 Q. Okay. And have you talked to anybody in preparation</p> <p>7 for your deposition today about this -- about this</p> <p>8 communication?</p> <p>9 A. I was presented this communication by Counsel.</p> <p>10 Q. Okay. Have you talked to -- I forgot. Was Linda Pell</p> <p>11 on the list of people you talked to?</p> <p>12 A. No.</p> <p>13 Q. Is she still with the company?</p> <p>14 A. She's not.</p> <p>15 Q. I see. Chris Charles is with the company, right?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Did you talk to Chris Charles about this?</p> <p>18 A. I did.</p> <p>19 Q. Okay. So do you know what -- what was the before story</p> <p>20 here? What is it that took place that led up to the</p> <p>21 March 22nd, 2007, e-mail from Linda Pell to David</p> <p>22 Butler in which Ms. Pell asks David, have you been able</p> <p>23 to confirm the UEP egg certification yet?</p> <p>24 A. I think this is where -- my thoughts are is that she</p> <p>25 was seeing pressures to try and get UEP certification</p>	<p style="text-align: right;">169</p> <p>1 of this correspondence? Were there any changes in</p> <p>2 policy from Kellogg's after this back and forth between</p> <p>3 Linda Pell and David Butler?</p> <p>4 A. None that I -- none that I know of.</p> <p>5 Q. Are you aware that Michael Foods -- go back to</p> <p>6 Exhibit 24.</p> <p>7 A. Okay.</p> <p>8 Q. It says in the second paragraph, second sentence, our</p> <p>9 vendor is UEP certified for liquid whole egg and has a</p> <p>10 small customer base with those requirements. Do you</p> <p>11 see that?</p> <p>12 A. Uh-huh.</p> <p>13 Q. Once again, that "our vendor" would be a reference to</p> <p>14 Michael Foods?</p> <p>15 A. Yes.</p> <p>16 Q. Kellogg's was aware that Michael Foods was UEP</p> <p>17 Certified in 2007?</p> <p>18 A. I would say so, yes.</p> <p>19 Q. To your knowledge, did Kellogg's ever complain to</p> <p>20 Michael Foods about the fact that Michael Foods was UEP</p> <p>21 Certified?</p> <p>22 A. No.</p> <p>23 Q. To your knowledge, did Kellogg's ever express any</p> <p>24 objection to Michael Foods being UEP Certified?</p> <p>25 A. No.</p>

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<p style="text-align: right;">170</p> <p>1 Q. During the time you were egg products buyer, which was 2 2009 to 2013, did you ever express any objection to 3 Michael Foods based on the fact that Michael Foods was 4 UEP Certified?</p> <p>5 A. No.</p> <p>6 MR. GREENE: Why don't we go off the record. 7 VIDEOGRAPHER: Going off the record at 8 3:25 p.m. 9 (Recess taken) 10 VIDEOGRAPHER: We're back on the record at 11 3:37 p.m. 12 MR. GREENE: All right. 13 (Exhibit No. 25 marked)</p> <p>14 BY MR. GREENE:</p> <p>15 Q. Neal Exhibit 25 is KEL00000757 through 759. Now, 16 Mr. Neal, Exhibit 25 is a -- it's an e-mail string. It 17 may actually be only two e-mails, one long one, one 18 short one. One from Trinh Le, June 11, 2007, subject, 19 project Skynyrd update. That's S-K-Y-N-Y-R-D. And 20 then a response -- well, not sure it's a response. 21 It's an e-mail from Christine Wentworth to John Wolf on 22 June 11th at 3:30 p.m. Do you see that?</p> <p>23 A. I do. I think there's three e-mails.</p> <p>24 Q. I'm sorry. What did I miss?</p> <p>25 A. There's another one there from Tammy. It's just below</p>	<p style="text-align: right;">172</p> <p>1 What was project Skynyrd?</p> <p>2 A. I have no idea what project Skynyrd is -- was.</p> <p>3 Q. Okay. Is project Skynyrd related to the Humane Society 4 in some way?</p> <p>5 A. Do you mind if I read the document and I can maybe -- 6 Q. Oh, absolutely. 7 A. -- answer further? 8 Q. Please. 9 A. Okay. 10 Q. Okay. Do you -- referring to Neal Exhibit 25, there's 11 the subject line project Skynyrd update. Do you know 12 what project Skynyrd was?</p> <p>13 A. From what I've read from this e-mail, it looks as if it 14 was, I would say, to reduce either the number or the 15 percent of eggs to make the products to be agreeable to 16 vegans. And by products, I mean, it would be the 17 MorningStar Farms. It says in this e-mail, as well, 18 the chick patties, chicken nuggets, and buffalo wings 19 are the ones they were going to be testing.</p> <p>20 Q. So does this tie into your earlier discussion about 21 MorningStar Farms adopting a strategy of reducing the 22 amount of eggs?</p> <p>23 A. That's correct.</p> <p>24 Q. Okay. And remind me. Did MorningStar Farms -- you 25 testified to this previously. Did MorningStar Farms</p>
<p style="text-align: right;">171</p> <p>1 the one from John at the very top.</p> <p>2 Q. There's three. I see it. Okay. So there's June 11th 3 5:17 from Trinh Le, there's June 11 16:22 from Tammy 4 Sherman Barnard, and then there's June 11th 3:30 from 5 Christine Wentworth, correct?</p> <p>6 A. That's correct.</p> <p>7 Q. Let's get the names out there. Who is Tammy Sherman 8 Barnard?</p> <p>9 A. Barnard. Currently, I think she is a launch program 10 manager for innovation projects.</p> <p>11 Q. Do you know what she was -- what position she had in 12 2007?</p> <p>13 A. I do not.</p> <p>14 Q. You've identified Christine Wentworth and John Wolf 15 before. What about -- I think you indicated before you 16 don't know who Trinh Le is.</p> <p>17 A. That's correct.</p> <p>18 Q. What about Julie K. Adams?</p> <p>19 A. Julie Adams. I know the name, but I'm not certain what 20 her title is.</p> <p>21 Q. Other than Christine Wentworth, do you recognize any of 22 the CCs in the Tammy Sherman Barnard e-mail?</p> <p>23 A. I recognize the name Craig Snow, but I don't know him 24 or --</p> <p>25 Q. Okay. The subject line is project Skynyrd update.</p>	<p style="text-align: right;">173</p> <p>1 also agree to buy a certain amount of cage-free eggs?</p> <p>2 A. No, I didn't say that. It was that we had agreed to 3 buy a million cage-free eggs. It was not distributed 4 in any one particular product.</p> <p>5 Q. Kellogg's.</p> <p>6 A. Kellogg's.</p> <p>7 Q. Kellogg's agreed at that same time?</p> <p>8 A. That's correct. Not in 2007. That would have been in 9 2011.</p> <p>10 Q. Okay. So 2007 -- the MorningStar Farms initiative in 11 2007 was simply to reduce the quantity of eggs that 12 were used in MorningStar Farms products?</p> <p>13 A. That's correct. 14 (Exhibit No. 26 marked)</p> <p>15 BY MR. GREENE:</p> <p>16 Q. I'm going to show you what's been marked as Neal 17 Exhibit 26, KEL00000373 through 380. It's titled 18 MorningStar Farms cage-free eggs discussion, 19 March 7, 2007. Do you see that?</p> <p>20 A. I do.</p> <p>21 Q. Okay. And you've testified a number of times about 22 around this timeframe MorningStar Farms exploring 23 options regarding animal welfare concerns, correct?</p> <p>24 A. That is correct.</p> <p>25 Q. And the first page identifies the challenge, and</p>

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<p style="text-align: right;">174</p> <p>1 there's two bullets. Potentially eliminate eggs from</p> <p>2 some of our items or reduce the amount of eggs in some</p> <p>3 of our items is one bullet. The second bullet is</p> <p>4 determine the cost of switching all of our eggs to</p> <p>5 cage-free eggs, correct?</p> <p>6 A. That is correct.</p> <p>7 Q. And I think your testimony is MorningStar Farms chose</p> <p>8 the first bullet as its policy, correct?</p> <p>9 A. That's correct.</p> <p>10 Q. If you look at the document bates numbered 378, the</p> <p>11 title of the page is cage-free dried egg white cost and</p> <p>12 supply chain assumptions. Do you see that?</p> <p>13 A. I do.</p> <p>14 Q. Okay. The first -- it says underneath that in the</p> <p>15 underlying portion, to get cage-free whites, the</p> <p>16 following assumptions must figure into the equation.</p> <p>17 The first bullet says cage-free eggs are approximately</p> <p>18 .50 cents per dozen more than regular table grade eggs</p> <p>19 on today's market. Did I read that correctly?</p> <p>20 A. That's for shell eggs. That's correct.</p> <p>21 Q. And was this the -- was the .50 cents per dozen kind of</p> <p>22 the working assumption that Kellogg's made in</p> <p>23 considering whether to switch to cage-free eggs?</p> <p>24 A. No. Because the cage-free eggs of that .50 cents per</p> <p>25 dozen is for shelled eggs. For a dried egg, it's quite</p>	<p style="text-align: right;">176</p> <p>1 this project, I believe, in an earlier document; is</p> <p>2 that correct?</p> <p>3 A. That is correct.</p> <p>4 Q. And I forget the answer. Were you familiar with a</p> <p>5 project to replace egg with methocyl at Worthington?</p> <p>6 A. No.</p> <p>7 Q. Does this document either refresh your recollection or</p> <p>8 help you in understanding how that story played out?</p> <p>9 A. The one that was adjacent to this at about the same</p> <p>10 timeframe. There were two options still. There was</p> <p>11 the reduction of -- and then adding this methocyl.</p> <p>12 Q. You don't know whether -- do you know whether this was,</p> <p>13 in fact, done?</p> <p>14 A. The only thing that I know is that we had reduced the</p> <p>15 number of eggs. Whether or not this -- the methocyl</p> <p>16 was added, I do not know.</p> <p>17 Q. You reduced the quantity of eggs in the formula for the</p> <p>18 products being produced at Worthington?</p> <p>19 A. That's the MorningStar Farms product. That's correct.</p> <p>20 Q. But this is 2004. This is considerably earlier than</p> <p>21 the 2007 documents we've been looking at.</p> <p>22 A. Yeah. It doesn't mean that it was done in 2004. We</p> <p>23 were reviewing it in 2004. It may not have happened</p> <p>24 until 2007 or '08.</p> <p>25 Q. But in 2004, were there any Humane Society or animal</p>
<p style="text-align: right;">175</p> <p>1 a bit more than that.</p> <p>2 Q. So the cost -- the premium, if you will, to go to</p> <p>3 cage-free eggs is even greater for a dried egg product</p> <p>4 than for shell eggs?</p> <p>5 A. On a per pound basis, yes.</p> <p>6 Q. So for egg products, .50 cents per dozen would really</p> <p>7 understate the premium?</p> <p>8 A. Yes.</p> <p>9 Q. At this stage at least, 2007, Kellogg's did not elect</p> <p>10 to purchase cage-free eggs for MorningStar products?</p> <p>11 A. That is correct. I think even to this day I don't</p> <p>12 think we can get enough cage-free eggs to dry -- to</p> <p>13 have dry product. That's my understanding from Michael</p> <p>14 Foods.</p> <p>15 Q. There's some names I haven't asked you about that show</p> <p>16 up on some of the documents. Jennifer Richards. Do</p> <p>17 you recognize that name?</p> <p>18 A. Jennifer Richards? I do -- no.</p> <p>19 (Exhibit No. 27 marked)</p> <p>20 BY MR. GREENE:</p> <p>21 Q. This is marked KEL00006455, Neal Exhibit 27. This is</p> <p>22 an e-mail from Bruce Pigsley to a large number of</p> <p>23 recipients. Subject, financial review of replacement</p> <p>24 of egg with methocyl, M-E-T-H-O-C-Y-L, at Worthington.</p> <p>25 I think we talked about -- there was some reference to</p>	<p style="text-align: right;">177</p> <p>1 activist pressures to change out of -- from eggs to</p> <p>2 some other product?</p> <p>3 A. My first -- what I had viewed was the first Linda Pell</p> <p>4 thing in 2005, 2006.</p> <p>5 Q. So this project may have been undertaken just to save</p> <p>6 money?</p> <p>7 A. That's correct.</p> <p>8 Q. Okay. Now, names. Do you know who Bruce Pigsley is?</p> <p>9 A. I've heard the name, but I don't know who he is.</p> <p>10 Q. Jennifer Richards?</p> <p>11 A. Again, I heard the name but don't know. And the same</p> <p>12 thing with Thomas Scott and Bruce Pigsley. I know</p> <p>13 their names, but I don't know what position they're in</p> <p>14 or where they reside today.</p> <p>15 Q. Okay. In your position as the egg buyer from 2009 to</p> <p>16 2013, did you become familiar with the various factors</p> <p>17 that can affect the price of eggs and egg products?</p> <p>18 A. Yes.</p> <p>19 Q. What are those factors?</p> <p>20 A. As we've stated already, the commodity. Knowing that</p> <p>21 we were grain-based, it would be the commodity side of</p> <p>22 things. So it would be corn; soybean meal; energy,</p> <p>23 which would be natural gas or whatever it takes to dry</p> <p>24 the product; any illnesses to chickens. The cage-free</p> <p>25 would also increase the cost of egg products.</p>

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<p style="text-align: right;">178</p> <p>1 Q. What about on the demand side? Changes that are diet 2 trends, could they affect the egg prices? 3 A. Yes, they could. 4 Q. How? 5 A. Just by the matter of -- from the supply and demand 6 side of things as I gave you in my example before with 7 McDonald's. 8 Q. Right. That was the example with the egg whites? 9 A. The egg whites, yep. 10 Q. Okay. And similarly, if there was a growth in the 11 demand for egg yolks, that could affect the market? 12 A. That's correct. 13 Q. What about the calendar, this seasonality, does that 14 affect prices in eggs and egg products? 15 A. I think that there's potential that it could in certain 16 regions. The type of -- the time of molting as well 17 would be another -- you know, because when they're 18 molting, they're not actually laying eggs or a reduced 19 amount of eggs after the fact as well. That would be 20 another time period of when. 21 Q. What about things like Christmas and Easter and sort 22 of -- 23 A. Absolutely. The holidays. 24 Q. The holidays, would that affect egg markets? 25 A. There are potentials of that changing them as well just</p>	<p style="text-align: right;">180</p> <p>1 talking about, correct? 2 A. That is correct. 3 Q. What about things like bird flu -- 4 A. Yes. 5 Q. -- disease, etcetera. How would that affect the 6 markets for eggs? 7 A. Your supply side would be reduced. So the price of 8 eggs would increase. 9 Q. Okay. Any factors other than the ones we've discussed 10 that you can think of? 11 A. Exporting. I know that towards the end of my egg 12 buying, I know that we were exporting quite a few eggs 13 over to Mexico because they had some issues. 14 Q. When you say "we," I'm sorry, what do you mean? 15 A. Sorry. The egg industry was exporting eggs to Mexico 16 during the middle to last half of last year. 17 Q. 2013? 18 A. 2013. Which also drove the price of eggs up higher. 19 Q. Is Kellogg's a member of FMI? Do you know the term 20 FMI? 21 A. I do not. 22 Q. Never heard of Food Marketing Institute? I'm not sure. 23 Is that right, food Marketing Institute? 24 A. I'm not certain if we're -- I wouldn't -- as a buyer I 25 wouldn't know it.</p>
<p style="text-align: right;">179</p> <p>1 from back to the supply and demand. 2 Q. How would the holidays change the supply and demand of 3 the egg markets? 4 A. Because I would say Easter is probably a very large 5 holiday that are notorious for eggs, egg coloring, 6 hiding of eggs; people's diets about -- around the 7 holidays; consuming of eggs and products that contain 8 eggs, pies, cookies. 9 Q. Does the -- as an egg products buyer, does the -- does 10 knowing about those holidays and how they affect egg 11 buying patterns, does it affect your strategy at all? 12 A. The strategy that we had when I was buying was 13 grain-based. So it took -- we were hoping that it took 14 a majority of that out. It was -- because we had -- we 15 had controlled a portion of the cost which was the 16 grains, the corn, and the soybean meal. In the dried 17 egg whites, on the other hand, we still went -- you 18 know, we still correlated to the Urner Barry market. 19 So we still saw fluctuations there. 20 Q. You'd see fluctuations if there was a push on the egg 21 white side relative to yolk, correct? 22 A. That's correct. 23 Q. Because when you're talking about Urner Barry within 24 the context of the grain-based formula, it's really the 25 relationship of the whites to the yolks that you're</p>	<p style="text-align: right;">181</p> <p>1 Q. Is Kellogg's a member of any industry associations 2 where you would find yourself in the same organization 3 with other companies that were also buying egg 4 products? 5 A. Probably Grocery Manufacturers of America I think or 6 GMA would be one that I would think of. 7 Q. So is Kellogg's a member of that? 8 A. I'm not certain. 9 Q. When you were egg products buyer, did you ever go to 10 meetings or association meetings where you came in 11 contact with egg products buyers from other companies? 12 A. Other egg buyers you're saying? 13 Q. Correct. 14 A. No. 15 Q. For example, in this case you're in the same complaint 16 with Kraft and Nestle and General Mills. 17 A. Yes. 18 Q. During the time when you were an egg products buyer, 19 did you come in contact with egg buyers from any of 20 those three companies? 21 A. None -- no. 22 Q. Never discussed issues of common interest to egg 23 products buyers? 24 A. No. The only -- I would recant on the -- I did -- as I 25 was mentioning during our break, Sara Lee. We had done</p>

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<p style="text-align: right;">182</p> <p>1 a joint venture looking at different opportunities that</p> <p>2 we could kind of add our volumes together to go look in</p> <p>3 different categories. Eggs was one of them, as well as</p> <p>4 I had stated before nut meats. So I -- my visit to</p> <p>5 Sara Lee we did discuss egg products. We didn't give</p> <p>6 them out any information of any great detail. But we</p> <p>7 -- with our spend and their spend, it didn't make</p> <p>8 sense. It was -- so that was the only time I would</p> <p>9 have had other contact with another egg buyer.</p> <p>10 Q. And when you say "with our spend and their spend, it</p> <p>11 didn't make sense," what do you mean?</p> <p>12 A. It was kind of lopsided. We were really looking for</p> <p>13 things that we had about an equal amount of volume so</p> <p>14 that from our standpoint we weren't the ones</p> <p>15 negotiating everything and then they just saw the</p> <p>16 benefit. So we were trying to really get things that</p> <p>17 were as close as possible in volume.</p> <p>18 Q. And when did these discussions occur?</p> <p>19 A. They would have been about 2010.</p> <p>20 Q. Any awareness of -- withdrawn. Are you familiar with</p> <p>21 NCCR, which I think is the National Council of Chain</p> <p>22 Restaurants?</p> <p>23 A. No.</p> <p>24 Q. Okay. Do you have any awareness or knowledge about</p> <p>25 comments made by either FMI or NCCR about the UEP</p>	<p style="text-align: right;">184</p> <p>1 Q. It's your understanding Rembrandt was on this Process</p> <p>2 Verified Program?</p> <p>3 A. That's my -- yes.</p> <p>4 Q. And were you dealing with Rembrandt at the time?</p> <p>5 A. Nothing more than just talks.</p> <p>6 Q. Did you ever -- well, if Rembrandt had these different</p> <p>7 categories or options available to buyers, did you --</p> <p>8 did you ever instruct Rembrandt that you wanted, say,</p> <p>9 more cage space and were willing to pay for it?</p> <p>10 A. We had gone down the path of kind of trying to do --</p> <p>11 compare apples to apples telling them -- they knew what</p> <p>12 the UEP certifications were for cage sizes. So we kind</p> <p>13 of went that route as far as trying to get the same</p> <p>14 size cage so that our pricing was roughly the same.</p> <p>15 Q. So did you instruct Rembrandt that you wanted your eggs</p> <p>16 produced under conditions comparable to UEP Certified</p> <p>17 conditions?</p> <p>18 A. Yeah.</p> <p>19 Q. And did they charge you a premium for that?</p> <p>20 A. There was a higher cost.</p> <p>21 Q. When did you start paying that premium?</p> <p>22 A. We never -- for Rembrandt?</p> <p>23 Q. Yes.</p> <p>24 A. We never purchased from Rembrandt.</p> <p>25 Q. Oh, this was just a proposal?</p>
<p style="text-align: right;">183</p> <p>1 Certified Program?</p> <p>2 A. No, I do not.</p> <p>3 Q. Has Kellogg's had any contact with anybody about animal</p> <p>4 welfare programs other than the UEP Certified Program?</p> <p>5 A. No.</p> <p>6 Q. Okay. Do you recognize a program by the name of</p> <p>7 Process Verified Program?</p> <p>8 A. I have heard of that.</p> <p>9 Q. Has Kellogg's been approached or had any discussions</p> <p>10 with anybody about the Process Verified Program?</p> <p>11 A. When I was buying eggs, I believe Rembrandt uses the</p> <p>12 Process Verified, just within our discussions with --</p> <p>13 my discussions with Rembrandt.</p> <p>14 Q. Do you remember anything about what the Process</p> <p>15 Verified Program is?</p> <p>16 A. From what I can recall, it was kind of -- instead of</p> <p>17 following more or less the UEP structure, it was more</p> <p>18 along the lines of what their consumers wanted. So if</p> <p>19 -- if Kellogg's as a consumer wanted them to continue</p> <p>20 with the, quote unquote, battery cages, they would stay</p> <p>21 in the battery cages. If we wanted them to change the</p> <p>22 size of the cage to whatever dimension or even go</p> <p>23 cage-free, they would do whatever Kellogg's had</p> <p>24 required them to do with of course a price change. But</p> <p>25 they were willing to do whatever their customer wanted.</p>	<p style="text-align: right;">185</p> <p>1 A. Yes.</p> <p>2 Q. I see. Okay. But you didn't purchase from Rembrandt?</p> <p>3 A. We did not.</p> <p>4 Q. What about American Humane Association Animal Welfare</p> <p>5 Standards. Have you ever -- any familiarity with</p> <p>6 those?</p> <p>7 A. No.</p> <p>8 Q. What about N-E-S-T eggs protocol, does that ring any</p> <p>9 bells?</p> <p>10 A. No.</p> <p>11 Q. Let me ask you a few more names. Kathy Jowers?</p> <p>12 A. I've heard of the name but --</p> <p>13 Q. I think I've asked you before about Craig Snow.</p> <p>14 A. Yeah, you've asked me. But I don't --</p> <p>15 Q. You don't know?</p> <p>16 A. He was the one, I think, from Worthington.</p> <p>17 Q. You don't know anything beyond what you told me before?</p> <p>18 A. Right.</p> <p>19 Q. Robert or Bob Updegraff, U-P-D-E-G-R-A-F-F?</p> <p>20 A. I have -- never heard of his name.</p> <p>21 Q. I think I've asked you about Julie Adams.</p> <p>22 A. Yes.</p> <p>23 Q. You already talked about her?</p> <p>24 A. We did.</p> <p>25 Q. We talked about Tammy Sherman Barnard, and James</p>

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<p style="text-align: right;">186</p> <p>1 Poppins we talked about before.</p> <p>2 A. Yes.</p> <p>3 Q. Remind me. Who is James Poppins?</p> <p>4 A. I do not know.</p> <p>5 Q. Okay.</p> <p>6 A. Same answer.</p> <p>7 Q. You reminded me.</p> <p>8 MR. GREENE: I don't have anything further.</p> <p>9 Are you going to have questions?</p> <p>10 MR. CAMPBELL: No, I'm not.</p> <p>11 MR. GREENE: Okay. There are some issues --</p> <p>12 there are some areas where -- we've had prior discovery</p> <p>13 as well where Mr. Neal wasn't able to provide</p> <p>14 information. I'm sure he was -- notwithstanding best</p> <p>15 efforts.</p> <p>16 So we may have occasion to follow up with</p> <p>17 Counsel on particular areas where we're looking for</p> <p>18 particular information. But I have no further</p> <p>19 questions for this -- at this 30(b)(6) deposition.</p> <p>20 MR. CAMPBELL: Those on the phone?</p> <p>21 MS. ANSARI: That we have unplugged?</p> <p>22 VIDEOGRAPHER: We're all done?</p> <p>23 MR. CAMPBELL: We're done.</p> <p>24 MR. GREENE: Yes. Do you want to make the</p> <p>25 statement about read and sign or --</p>	<p style="text-align: right;">188</p> <p>1 CERTIFICATE OF NOTARY PUBLIC</p> <p>2 STATE OF MICHIGAN)</p> <p>3)</p> <p>4 COUNTY OF MACOMB)</p> <p>5 I, Trisha N. Cameron, Certified Shorthand</p> <p>6 Reporter and Notary Public in and for the State of</p> <p>7 Michigan, do hereby certify that the witness whose</p> <p>8 attached deposition was taken before me in the above</p> <p>9 cause was first duly sworn or affirmed to testify to</p> <p>10 the truth, the whole truth, and nothing but the truth;</p> <p>11 that the testimony contained herein was by me reduced</p> <p>12 to writing in the presence of the witness by means of</p> <p>13 Stenography; afterwards transcribed by means of</p> <p>14 computer-aided transcription; and that the deposition</p> <p>15 is a true and complete transcript of the testimony</p> <p>16 given by the witness to the best of my ability. I</p> <p>17 further certify I am not connected by blood or marriage</p> <p>18 with any of the parties, their attorneys or agents;</p> <p>19 that I am not an employee of either of them; and that I</p> <p>20 am not interested directly, indirectly, or financially</p> <p>21 in the matter of controversy.</p> <p>22</p> <p>23 _____</p> <p>24 Trisha N. Cameron, RPR, CSR-6175</p> <p>25 Notary Public, Macomb County, Michigan</p> <p>My Commission Expires 5-24-18</p>
<p style="text-align: right;">187</p> <p>1 MR. CAMPBELL: We will not waive signature.</p> <p>2 We will read it and sign it. Yes.</p> <p>3 MR. GREENE: Okay. Thank you.</p> <p>4 VIDEOGRAPHER: This concludes the deposition.</p> <p>5 And we're going off the record at 4:05 p.m.</p> <p>6 (Deposition concluded at 4:05 p.m.)</p> <p>7 * * *</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	